

COMMENTS OF JOHN SEXTON
SAND & GRAVEL CORPORATION IN OPPOSITION
TO PROPOSED ADDITION OF SEXTON/31ST STREET
LANDFILL TO ILLINOIS SRAPL

March 1, 1988

SUMMARY OF ARGUMENTS

- I. THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RULE GOVERNING THE ADDITION OF SITES TO THE STATE REMEDIAL ACTION PRIORITIES LIST IS INCONSISTENT WITH THE ILLINOIS ENVIRONMENTAL PROTECTION ACT AND VIOLATES THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT.

The Agency's rule is not "identical in substance" to the federal regulations governing the listing of sites on the National Priorities List, as authority pursuant to which the rule is promulgated requires. The Pollution Control Board cannot escape the Environmental Protection Act's mandate that the Board's regulations be identical to the corresponding federal regulations by delegating the responsibility for promulgation of some of those regulations to the IEPA, and then permitting the Agency to adopt regulations that are not identical in substance.

- II. THE PROCESS BY WHICH SITES ARE ADDED TO THE SRAPL CONSTITUTES AN UNCONTROLLED EXERCISE OF AGENCY DISCRETION AND IS ARBITRARY AND CAPRICIOUS.

Because the Agency offers no guidance as to how the factors it considers are to be weighted, and provides no measurable or definitive standard for when a site will be listed, the decision to list is entirely within the uncontrolled discretion of the Agency and is not subject to meaningful review. The lack of standards and guidance renders the Agency's listing decisions arbitrary and capricious. Further, because the proposed listing is unaccompanied by any explanation of its basis, owners and

operators are deprived of certain constitutional rights without due process of law.

III. EVEN IF THE FACTORS LISTED IN THE AGENCY'S RULE DO PROVIDE A RATIONAL BASIS FOR DETERMINING WHICH NEW SITES TO LIST ON THE SRAPL, APPLICATION OF THESE FACTORS TO THE 31ST STREET LANDFILL INDICATES THAT IT SHOULD NOT BE LISTED.

The HRS score assigned to the site is based on an erroneous assumption that hazardous substances were present in an load of material deposited at the site. In addition, the scorer failed to identify the correct aquifer of concern and target population, and failed to consider site characteristics which minimize or prevent a contaminant from leaching. The HRS score should be recalculated to correct these mistakes and to take into account new data concerning the direction of groundwater flow beneath this site. This data indicates that only a very small population could be considered to be at risk.

Further, consideration of other factors, such as Sexton's willingness to provide alternate sources of drinking water, and the fact that any problems at this landfill can be addressed under the Pollution Control Board's solid waste regulations, indicates that this site should not be listed.

- IV. ADDITION OF THE 31ST STREET LANDFILL TO THE SRAPL IS PRECLUDED BY THE RULE THAT THE AGENCY SHALL NOT LIST A SITE ON THE SRAPL IF THE SITE SCORES LESS THAN 10 USING THE FEDERAL HRS, OR IF THE AGENCY FINDS THAT THERE IS NO RELEASE OR SUBSTANTIAL THREAT OF A RELEASE OF A HAZARDOUS SUBSTANCE.

The 31st Street Landfill was incorrectly scored under the HRS. Proper scoring yields HRS scores below 10. Further, there is no evidence that there exists a release or substantial threat of a release of a hazardous substance at the landfill. Therefore, the site may not be listed on the SRAPL.

- V. THE 31ST STREET LANDFILL SHOULD NOT BE LISTED BECAUSE POST-CLOSURE CARE AND PERMIT REQUIREMENTS IMPOSE THE SAME TYPES OF REQUIREMENTS AS REGULATIONS UNDER RCRA AND IT IS USEPA'S POLICY NOT TO LIST SITES ON THE NPL THAT ARE REGULATED UNDER RCRA.

COMMENTS OF JOHN SEXTON SAND AND GRAVEL CORPORATION
IN OPPOSITION TO PROPOSED ADDITION OF SEXTON/31ST STREET
LANDFILL TO ILLINOIS SRAPL

INTRODUCTION

John Sexton Sand and Gravel Corporation ("Sexton") operates a sanitary landfill at 31st Street and the Tollway at Westchester in unincorporated Cook County. The landfill has been properly closed and covered. No release of hazardous substances has been reported or observed at this sanitary landfill.

On January 4, 1988, the Illinois Environmental Protection agency ("IEPA" or "the Agency") published in the Illinois Register a proposed amendment to 35 Ill. Adm. Code § 860 that would add the 31st Street sanitary landfill to the State Remedial Action Priorities List ("SRAPL"). This site should not be added to the SRAPL, based on a consideration of the factors set forth at § 860.220(b)(1) through (b)(5). Furthermore, according to the Agency's own rule set forth at § 860.200(b), the Agency may not add this site to the list.

BACKGROUND

The 31st Street Landfill occupies an area of approximately 275 acres and is located at 31st Street and the tollway at Westchester in unincorporated Cook County. The site began operation in October of 1958, as permitted by the Illinois Department of Public Health, and stopped accepting waste in 1986.

Throughout the years that the landfill was in service, the site accepted general municipal waste and non-hazardous industrial

refuse. There is no documented receipt of hazardous waste at this site.

The site was closed to municipal waste in 1982, and closed to all waste in 1986. At that time, final cover was applied in a manner to ensure compliance with the terms of a 1969 Court Decree (see Exhibit 1), with the requirements of 35 Ill. Adm. Code § 807.305(c), and with the terms of a written agreement between Sexton and the site's owner. The Court Decree required that not less than five feet of clean earth be applied as final cover; rule 807.305(c) requires two feet of final cover. Sexton applied eight feet of final cover to the site, in accordance with the terms of its agreement with the site's owner. The depth of the final cover ensures that no waste will be exposed through erosion and greatly reduces the infiltration of precipitation into the landfill.

Currently, the site is subject to the post-closure requirements of the Illinois Pollution Control Board's solid waste regulations. On March 1, 1988, Sexton submitted an amended post-closure plan for this site as required under those regulations.

Sexton is aware of the importance of the SRAPL to the Illinois Hazardous Substances Pollution Contingency Plan and recognizes that the Agency must have some system or process for identifying and prioritizing those sites which are proper candidates for response or remedial action under that Plan. Sexton also recognizes that it is difficult to design a system that accurately assesses conditions at a site and that even the best system can be subverted when technical mistakes are made in its

application. In fact, the majority of Sexton's comments are addressed to this type of technical error in the application of the federal Hazard Ranking System to this site.

However, the problems with the process by which sites are added to the SRAPL go beyond the potential for technical mistakes in application of the Hazard Ranking System. Technical mistakes are easily corrected. The more serious problem with the process is that it constitutes such an unfettered exercise of the Agency's discretion that it infringes upon the constitutional rights of Illinois property owners. Sexton has no choice but to call these problems to the attention of the Agency.

There are four primary reasons why this site should not be listed on the SRAPL:

1. The Agency's rule for determining which sites are to be added to the SRAPL is inconsistent with the Illinois Environmental Protection Act and violates the Illinois Administrative Procedure Act;
2. The basis for listing sites on the SRAPL is arbitrary and capricious and violates Sexton's constitutional right to due process of law;
3. Even if the factors listed at § 860.220(b)(1)--(b)(5) did provide a rational basis for determining which sites to add to the SRAPL, application of those factors to this site indicates it should not be listed;
4. Section § 860.200(b) precludes the listing of this site on the SRAPL.

Furthermore, the 31st Street Landfill should be regulated through the post-closure requirements of the Pollution Control Board's solid waste regulations rather than by placement on the SRAPL.

Each of these reasons is discussed in detail below.

I. THE AGENCY'S RULE FOR DETERMINING WHICH SITES ARE TO BE ADDED TO THE SRAPL IS INCONSISTENT WITH THE ILLINOIS ENVIRONMENTAL PROTECTION ACT AND VIOLATES THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT.

Sites are added to the SRAPL in accordance with the provisions of Part 860 of Title 35 of the Illinois Administrative Code. The rules which comprise Part 860 were promulgated by the Agency ostensibly under the authority of sections 4 and 22.2(d) of the Illinois Environmental Protection Act ("the Act") and at the direction of the Pollution Control Board ("Board"), pursuant to 35 Ill. Adm. Code § 750.440(d).

Recently, the Agency amended Part 860 to change the rule that sets forth the basis for listing sites on the SRAPL. The amended rule became effective July 9, 1987. This new rule is inconsistent with the mandate of the Board's rule as set forth at § 750.440(d). Further, the Agency's amended rule is inconsistent with federal regulations promulgated to implement § 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. § 9601 et seq.). As a result, the Board's rule 750.440(d) is inconsistent with § 22.7 of the Illinois Environmental Protection Act ("Environmental Protection Act"), pursuant to which the Board's rule was promulgated. Finally, because the

Agency's rule is different from federal regulations promulgated to implement § 105 of CERCLA, the Agency's rule is inconsistent with sections 22.7, 26 and 28 of the Environmental Protection Act, and violates the Illinois Administrative Procedure Act (Ill. Rev. Stat. ch. 127, § 1001 et seq.).

In order to understand why the Agency's rule is deficient, it is necessary to review the Board rule pursuant to which the Agency's rule was promulgated. Section 22.7 of the Environmental Protection Act required the Board to adopt "regulations which are identical in substance to federal regulations or amendments thereto promulgated by the . . . [USEPA] to implement § 105 of [CERCLA], as amended." Section 105 of CERCLA provides for the establishment of a national hazardous substance response plan (the National Contingency Plan, or "NCP") for responding to releases of hazardous substances, criteria for determining priorities among releases or threatened releases for the purpose of taking remedial action, and a list (the National Priorities List, or "NPL") of national priorities among known releases or threatened releases of hazardous substances.

Section 22.7(a) required the Board to promulgate regulations identical in substance to the federal regulations which implement § 105 of CERCLA. Section 22.7(a) also provided that procedural steps normally applicable to the Board's rulemaking would not apply to regulations promulgated under § 22.7, presumably because these regulations were to be identical in substance to the federal regulations.

Section 22.7(b) allowed the Board to adopt regulations relating to the state contingency plan which were not identical in substance to the corresponding federal regulations, but provided that such regulations could only be adopted in accordance with the Board's normal rulemaking procedures, found at §§ 26 and 28 of the Environmental Protection Act, and subject to the provisions of the Illinois Administrative Procedure Act. The Board's normal rulemaking procedures require that the public be given notice and an opportunity to comment on proposed rules, and that the Board make available the text of the proposed rule, as well as a summary of the reasons supporting its adoption. Further, under the General Rulemaking provisions of the Administrative Procedure Act, the Board must publish a series of notices of the proposed rules in response to comments received concerning the proposals, and hold a public hearing on the proposed rules if the Board determines that such a hearing would encourage the submission of additional comments, or if a hearing is requested by at least twenty-five interested persons. (See Ill. Rev. Stat. ch 127 § 1005.01).

In response to the mandate of § 22.7(a), the Board promulgated what is now 35 Ill. Adm. Code Part 750. Rule 750.440(d) -- "Methods for Establishing Priorities" -- directs the IEPA to establish a State Priorities List and provides that "[s]uch list shall be compiled using the Federal Hazard Waste Ranking System (40 CFR 300, Appendix A, as amended)."

The Board clearly contemplated that the State Priorities List, consistent with federal regulations, would be used to rank

"releases." Section 750.440(d)(2) is titled "Ranking of Releases," and discusses "Risks Presented by Releases." In addition, the rule instructing IEPA to develop a State Priorities List is found at Phase IV of "Subpart D: Hazardous Substance Response," which phase is described as "Evaluation and Determination of Appropriate Response," and which is to be conducted "when the preliminary assessment indicates that further response may be necessary." (See § 750.440(a)).

The Agency promulgated § 860.200(a) in response to the Board's direction that it establish a State Priorities List. The original rule 860.200(a), which provided the basis for determining which sites will be added to the list, appeared to be consistent with the Board's directive at rule 750.440(d) that the List "shall be compiled using the Federal [HRS]." Under the Agency's original rule, the Agency was required to list those sites that scored 10 or higher, but less than 28.5, using the federal HRS. Under the old rule, then, there was no discretion concerning the listing of sites scoring greater than or equal to 10, but less than 28.5; the listing of all such sites was mandatory.

The new rule is inconsistent with the Board's requirement that the list be compiled using the federal HRS. The new rule provides in pertinent part as follows:

Commencing on June 1, 1987, the Agency shall consider the factors set forth in Section 860.220(b)(1) through section 860.220(b)(5) in determining which new sites to list on the SRAPL.

The factors set forth in 860.220(b)(1)--(b)(5) are as follows:

- 1) The HRS scores and the information collected to develop such scores;

- 2) Other studies and information relating to the sites, including but not limited to field inspection reports, monitoring data, permit application materials and research reports;
- 3) The type of remedial action required and the availability of funds to undertake such remedial action;
- 4) The relative risks to public health, welfare or the environment posed by the sites; or
- 5) Other factors relating to the sites, including but not limited to whether responsible parties are willing to voluntarily undertake remedial action, the availability of State resources to manage remedial action, pending enforcement actions, or the applicability of other regulatory requirements to the site.

If the Board had wanted the Agency to consider these factors in compiling the list, the Board would have said so at rule 750.440(d). That rule provides no such direction, and states only that the list shall be compiled using the federal HRS. In fact, the Board could not have instructed the Agency to consider the factors listed above without violating the mandate of § 22.7(a) of the Environmental Protection Act that the Board's regulations be identical in substance to the corresponding federal regulations.

The federal regulations concerning the listing of sites on the NPL do not provide for a consideration of the types of factors listed above. Instead, the federal rules contain "three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS Those sites that score 28.50 or greater on the HRS . . . are proposed for listing. In addition, States may designate a single site as the State top priority (emphasis added)." Finally, section 300.66(b)(4) of the Code of Federal Regulations (Title 40) allows certain sites to be eligible for the NPL if all of the following occur:

- 1) The Agency for Toxic Substances and Disease Registry of the U.S. Department of Health and Human Services has issued a health advisory which recommends dissociation of individuals from the release.
- 2) EPA determines that the release poses a significant threat to public health.
- 3) EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

50 FR 37630-31 (1985).

The Agency's rule concerning the addition of sites to the SRAPL is clearly not "identical in substance" with the federal regulations governing the listing of sites on the NPL. First, although the Agency's rule makes some use of the HRS scores, the Agency's rule, unlike federal regulations, specifies no score which automatically requires listing on the SRAPL. Second, the Agency's rule contains no clear-cut standards identical in substance to those set forth at 40 CFR § 300.66(b)(4) for listing sites posing an imminent and substantial threat to public health. Rather, the Agency's rule simply provides for an unstructured, unfettered consideration of a number of factors.

Because the Agency's rule for determining what sites will be added to the SRAPL is not identical in substance to the federal regulations governing the listing of sites on the NPL, both the Agency's rule and the Board's authorizing rule (i.e., § 750.440(d)) violate § 22.7(a) of the Environmental Protection Act. Surely the Board cannot escape that section's mandate that the Board adopt regulations identical in substance to the corresponding federal regulations by delegating the responsibility for promulgation of certain of those regulations to the Agency, and

then permitting the Agency to adopt regulations that are not identical in substance.

Nor can the Board avoid the procedural requirements of § 22.7(b), governing the adoption of rules not identical in substance to the federal regulations, by simply delegating responsibility for promulgation of those rules to the Agency.

The Agency's rule thus violates the spirit of §§ 22.7(a) and (b) of the Environmental Protection Act, and the letter of § 5 of the Illinois Administrative Procedure Act.

II. THE PROCESS BY WHICH SITES ARE ADDED TO THE SRAPL CONSTITUTES AN UNCONTROLLED EXERCISE OF AGENCY DISCRETION AND IS ARBITRARY AND CAPRICIOUS.

The factors which the Agency must consider under the new rule in determining whether to add a site to the list are the same factors which, according to rule 860.220(b), the Agency must consider in determining the order in which sites already on the list shall be the subject of State-financed remedial action. The Agency has simply taken the factors used in making one type of decision and grafted them onto another decisionmaking process. Because the types of decisions being made under these two rules are different, use of the same factors in making both types of decisions is inappropriate.

For example, according to the amended rule, in determining whether to list a site on the SRAPL, the Agency must now consider "the type of remedial action required and the availability of funds to undertake such remedial action." In order to consider

"the type of remedial action required," the Agency would already have to have determined that some remedial action is necessary and what that remedial action will be. Yet, the very purpose of "the initial identification of a site on the SRAPL is . . . to guide the Agency in determining which sites warrant further investigations designed to assess . . . what . . . remedial action, if any, may be appropriate" (35 Ill. Adm. Code § 860.100(b)).

Similarly, the Agency must now consider, in determining whether to list a site, "whether responsible parties are willing to voluntarily undertake remedial action" It is difficult to see how the Agency can evaluate the willingness of responsible parties to voluntarily undertake remedial action when it has not yet been determined whether remedial action is necessary at all, and responsible parties have not yet been identified.¹ These determinations assume the availability of certain information which in all likelihood will not be available for most sites at the time the site is considered for listing on the SRAPL.

Although the rule setting forth the basis for determining which sites to list on the SRAPL does require consideration of some factors for which information presumably is available,² the

1 The unsuitability of these factors to the determination of whether to list a particular site is further evidenced by reference throughout them to "sites." The use of the plural indicates that the original (and more suitable) purpose of these factors was to evaluate a group of sites -- i.e., those already listed -- and prioritize them.

2 This may not be true for many sites. The rule provides that the Agency shall consider "the relative risks to public health, welfare, or the environment posed by the sites." It

rule is deficient in that it provides no guidance as to the relative weight or importance to be assigned to each factor. The rule provides that the Agency "shall consider" the "HRS scores, . . . other studies, . . . the relative risks to public health . . . [and] other factor relating to the sites," but provides no guidance as to how each factor impacts the decision whether to list a site, whether information pertaining to each factor must be available, and how listing decisions will be made if it is not.

Furthermore, unlike old rule 860.220(a), the new rule lacks any clear-cut standard as to when a site shall be listed. Since listing of sites scoring greater than or equal to 10 but less than 28.5 is no longer mandatory, owners and operators of such sites can no longer anticipate with any certainty when their sites will be listed.

In addition, the Agency's rule is arbitrary in that the Agency has provided no explanation for that portion of the Agency's rule which provides that the Agency shall not list a site on the SRAPL if the site scores less than 10.0 using the Federal HRS. (See 35 Ill. Adm. Code § 860.200(b)(1)). The Agency has provided no technical, factual or scientific basis for the use of an HRS score of 10 as a cut-off.

Finally, the Agency's rule appears to prohibit the Agency from incorporating into the decision-making process any amendments to the federal HRS after June 1, 1987. If in fact the Agency is

is doubtful whether this type of information, other than that used in calculating an HRS score would be available for most sites.

prohibited from taking into account any such amendments, then the rule itself becomes arbitrary because it prevents the Agency from taking advantage of USEPA's experience in administering the Hazard Ranking System. The Agency would be prohibited, for example, from incorporating those corrections to erroneous methodologies or improvements in the type, quality or quantity of information which the USEPA determines through experience should be a part of the HRS. This refusal to consider subsequent amendments would also violate the Board's rule 750.440(d) which states that the SRAPL shall be "compiled using the Federal Hazard Waste Ranking System . . . as amended."

Without guidance as to how the factors listed at 860.220(b) (1)--(b)(5) are to be weighted, and without a measurable or definitive standard, the decision whether to list a site on the SRAPL is entirely within the uncontrolled discretion of the Agency and is not subject to meaningful review. The lack of standards for determining whether to list a site renders the Agency's listing decisions arbitrary and capricious.

In addition, this lack of standards in the rule which sets forth the basis for listing sites deprives site owners and operators of certain rights protected by the United States and Illinois Constitutions.

Sexton's business consists exclusively of the ownership and operation of waste disposal facilities throughout the United States. Its ability to attract and retain customers depends almost entirely on its reputation for compliance with environmental rules and regulations, and on the reputation of its disposal

facilities as environmentally sound. Similarly, Sexton's ability to obtain and renew the various permits and licenses required to conduct its business depends on the record of compliance of all of Sexton's facilities. Its reputation for compliance with environmental laws therefore directly impacts its ability to obtain permits and attract customers. When its ability to do either of these things is impaired, its ability to conduct its business is severely jeopardized.

Sexton's right to conduct its business is analogous to an individual's right to pursue a livelihood. That right is one of the freedoms protected under the Illinois and United States Constitutions. Any damage to Sexton's reputation for environmental compliance jeopardizes its ability to conduct business and thus constitutes an interference with this constitutionally protected interest.

While the proposed listing of a site on the SRAPL may be of little consequence to firms or individuals not engaged exclusively in the waste disposal business, the proposed listing of a Sexton site works an immediate injury upon Sexton's ability to conduct business. The considerable adverse publicity surrounding the proposed listing places in jeopardy Sexton's reputation with its customers. The proposed listing also jeopardizes Sexton's ability to obtain operating permits for other sites. Further, harm to Sexton's ability to attract and retain customers may be irreparable, as it is unlikely that any decision by the Agency not to list the proposed sites will receive nearly the same type and amount of media coverage as did the proposed listing. The proposed listing

of Sexton's sites thus deprives Sexton of its constitutionally protected right to conduct its business.

This deprivation of a constitutional right is effected without due process of law where, as here, notice of the proposed listing is unaccompanied by any explanation whatsoever of the basis for the proposed listing. Notice of proposed additions to the SRAPL, unlike notice of proposed additions to the NPL, are unaccompanied by any statement of reasons outlining the basis for the proposed listing of a particular site. Proposed additions to the NPL typically indicate the site's HRS score, which normally is the sole basis for listing a site. Where other factors -- such as the owner's bankruptcy, for example -- formed a part of the decision to list, those factors are included in the notice. In addition, USEPA has published several detailed policy statements concerning the way in which sites may be proposed for listing on the NPL. (See, e.g., 51 FR 21054; 52 FR 27620).

In Illinois, the notice of a proposed addition to the SRAPL simply announces the names and locations of sites the Agency is proposing to list. The owner or operator of a proposed site typically receives notice that one of its sites has been proposed for addition to the SRAPL through a letter sent by the Agency and through notice published in the Illinois Register. Sexton received such a letter from the Agency for its 31st Street Landfill. A copy of that letter, together with a copy of the notice from the Illinois Register, are attached to these comments as Exhibit 2. Sexton cannot tell from these "notices" whether the basis for the proposed listing of its 31st Street site is the site's HRS score,

if so, what that score was,³ whether the Agency considered the remaining factors set forth at § 860.220(b)(1) -- (b)(5) and, if so, what information was used for each factor and what weight or importance each factor was given in the Agency's decision to propose the site for addition to the SRAPL. The process by which sites are added to the SRAPL therefore lacks one of the most important procedural protections for a rulemaking proceeding -- "the opportunity to know and to question the basis of a proposed regulation."⁴ Although members of the public are given notice and an opportunity to comment on proposed additions to the SRAPL, they cannot comment meaningfully on a proposal when they are not apprised of the reasons for it.

The requirements of due process of law and sound administrative practice require that persons directly affected by amendments to rules be given an explanation of the reasons for the amendment. More than one court has commented that it "is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that . . . is known only to the agency."⁵ Where, as here, an agency does not give sufficient

3 Sexton obtained a copy of the HRS score and accompanying materials only after requesting such materials from USEPA under the Freedom of Information Act.

4 Currie, Rulemaking Under Illinois Pollution Control Law, 12 U. Chi. L. Rev. 457 (1975).

5 Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375 (D.D.C. 1973); Kennecott Copper v. EPA, 462 F.2d 846 (D.D.C. 1972).

indication of the basis on which the agency reached its decision, there can be no meaningful review of the decision to determine whether it embodies an abuse of discretion. This lack of a meaningful opportunity to comment on proposed additions to the SRAPL, together with the absence of well-defined standards for listing a site, denies owners and operators of such sites the due process of law to which they are entitled under the Illinois and United States Constitutions.

- III. EVEN IF THE FACTORS LISTED AT § 860.220(b)(1)--(b)(5) DO PROVIDE A RATIONAL BASIS FOR DETERMINING WHICH NEW SITES TO LIST ON THE SRAPL, APPLICATION OF THOSE FACTORS TO THE 31ST STREET LANDFILL INDICATES THAT IT SHOULD NOT BE LISTED.

Consideration of each of the factors set forth at § 860.220(b)(1)--(b)(5) indicates that this site should not be added to the SRAPL.

A. HRS Score

The amended rule provides that the Agency shall consider "the HRS scores and the information collected to develop such scores" in determining whether a site should be listed on the SRAPL. In contrast to the old rule, the new rule provides no base score which triggers mandatory listing.⁶ Instead, the new rule provides

⁶ The old rule provided that the agency "shall list on the SRAPL those sites which . . . score greater than or equal to 10.0, but less than 28.5, using the Federal . . . HRS."

by implication that the Agency may list those sites which score greater than or equal to 10,⁷ but less than 28.5.

The HRS score for the 31st Street Landfill was calculated in 1985 by representatives of Ecology & Environment, Inc. who had been retained by USEPA. The site was given a score of 28.16. That score, however, was based on erroneous assumptions. Had the site been scored using the correct facts and proper assumptions, it would have received a score of less than 10, which, by the Agency's own rule 860.200(b)(1), would preclude the site from being added to the SRAPL.

A review of the Ground Water Route Work Sheet contained in the HRS scoring package for this site indicates that the assumptions upon which the score for potential harm to groundwater was computed were wrong.⁸ While the scorer correctly pointed out that there has been no observed release of a hazardous substance at the site, he made incorrect assumptions concerning the target population deemed to be at risk and the nature of the substances that population is deemed to be at risk from.

7 If a site scores less than 10, the Agency "shall not list" it. 35 Ill. Adm. Code § 860.200(b)(1).

8 In fact, the entire HRS score for the 31st Street Landfill is based on an incorrectly high score for risk associated with potential harm to groundwater. The rest of the scoring package indicates that the site presents no risk of harm to the public from fire and explosion, direct contact with hazardous substances, or migration of a hazardous substance through surface water or air.

1. The waste used to evaluate the "most hazardous substances that could migrate" was not hazardous.

First, any discussion of the potential harm that might be caused by this landfill must take into account the fact that there is no documented receipt of hazardous waste at the site. In spite of this fact, in 1981 Sexton filed with the USEPA a notification under § 103(c) of CERCLA. That section requires owners and operators of facilities at which more than 55 gallons of hazardous substances had been disposed of, or at which hazardous substances had been treated or stored, to notify USEPA of the existence of the facility, unless that facility had been issued a permit to operate a hazardous waste treatment, storage, or disposal facility under the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C. § 6901).

Sexton never sought a RCRA permit for its 31st Street Landfill because the site was not used to treat, store, or dispose of hazardous waste. Nevertheless, in spite of the fact that it had no reason to believe that hazardous substances were present at the facility, and simply as a precautionary measure, Sexton, along with many similarly-situated companies, filed a notification under § 103(c). Sexton's notification (attached hereto as Exhibit 3) specifically denied that any of its facilities were hazardous waste disposal facilities.

As a result of this precautionary filing, USEPA inspected the 31st Street Landfill late in 1984 and prepared an HRS score for the site approximately six months later.

In order to calculate an HRS score for the site in accordance with USEPA's guidance on the Hazard Ranking System, the scorer had to "evaluate the most hazardous substances at the facility that could migrate . . . to ground water." (See 40 CFR Part 300, App. A -- "Uncontrolled Hazardous Waste Site Ranking System; A Users Manual" (1986) at 794) (hereinafter cited as "HRS Guidance"). The HRS score for the 31st Street Landfill is fundamentally flawed because the HRS scorer evaluated as "the most hazardous substances at the facility that could migrate to ground water" substances which the IEPA had already determined were non-hazardous.

The waste used to calculate the "Physical State" and "Waste Characteristics" sections of the Ground Water Route Work Sheet was a load of waste which was brought to the 31st Street Landfill for emergency disposal on September 9, 1980. The load consisted of 200-400 pounds of calcium oxide (a common water softening agent) which had been improperly placed into cardboard boxes at the time it was picked up for disposal. Rainwater mixed with the calcium oxide en route to the landfill, causing the substance to generate heat, which ignited the cardboard boxes. (See USEPA Reference #5; letter dated 10/20/80 to Mr. Ray Albrecht of Western Electric Co., attached hereto as Exhibit 4.)

The HRS scorer incorrectly described the Physical State of this substance as a powder and assigned it a score of 2 on the Ground Water Route Work Sheet. When the substance was mixed with water it became a sludge. Accordingly, the Physical State factor should have received a score of 1.

More important, however, is the fact that the IEPA took samples of this material and found it to be non-hazardous. In spite of this fact, which was clearly set forth in the IEPA's letter to Sexton dated October 9, 1980 (attached hereto as Exhibit 5), the scorer proceeded to evaluate a number of substances which he wrongly believed to be present in the material. The HRS scorer selected lead as the compound with the highest score, based on its toxicity and persistence. Yet, no lead was detected in the IEPA samples. (See Exhibit 6, showing results for lead below detection limits). Further, other substances for which the IEPA tested and which the HRS scorer evaluated were either below detection limits or were present in concentrations below those specified in the USEPA's toxicity test. (See Exhibit 6.) Therefore, this material was neither a hazardous waste nor composed of hazardous substances.

The HRS score for the site is thus based on the erroneous assumption that hazardous substances were present in a load of material deposited at the site. The site should be re-scored to correct this mistake and to take into account the fact that there is no documented receipt of hazardous waste. Due to the absence of such data, according to the HRS Guidance, the "Waste Characteristics" score of the Ground Water Route Work Sheet should be 0.⁹

9 "Where there are no data for a factor, it should be assigned a value of zero." HRS Guidance at 788. See also 47 FR 10976: "The HRS is to be applied only where adequate data exist."

2. The scorer failed to identify the correct aquifer of concern and target population.

The cover sheet for the HRS scoring package states that "due to a lack of a liner or containment system and the existance (sic) of a target population, the groundwater route is emphasized." (See Exhibit B to "Uncontrolled Hazardous Waste Site Rating 31st Street Landfill," prepared by Eldredge Engineering Associates, Inc., February 26, 1988) (hereinafter cited as "Eldredge Report.") The scorer's assumptions about both factors were wrong.

First, according to the HRS guidance, "'Containment' is a measure of the natural or artificial means that have been used to minimize or prevent a contaminant from entering ground water" (HRS Guidance at 794) (emphasis added). While it is true that there is no artificial leachate collection system at the 31st Street Landfill, a Soil Investigation Report prepared by W. H. Flood & Co., Inc., which became part of the site's application for an operating permit, indicates that the site is underlain by clay tills ranging from 11 to 44 feet thick. (See Walter H. Flood & Co., Inc. Soil Investigation No. 7205-0010, attached hereto as Exhibit 7.) The site was developed in accordance with the Flood Report's recommendation that at least five feet of this dense clay be left in place as a natural liner. The USEPA Site Inspection Report states that "it is believed that at least five feet was left intact as a bottom liner." The existence of five feet of impermeable clay at the bottom of a landfill clearly constitutes a natural liner.

Yet, although the HRS scorer cited the Flood Soil Investigation and the comments of the USEPA investigator, both of which referred to the natural clay liner, as references for the value assigned to the "Containment" factor, he nevertheless assigned a value of 3 to that factor. According to the HRS Guidance, a score of 3 indicates, among other things, "no liner; or incompatible liner." Clearly a five-foot thick clay liner is compatible with the acceptance of non-hazardous waste. Further, the landfill is protected by a cap of final cover material which is eight feet thick and by a system of drainage ditches which precludes surface ponding. The scorer ignored these features when he assigned a value of 3. According to the HRS Guidance, this factor should have been assigned a value of 1, indicating the presence of an "essentially non-permeable compatible liner with no leachate collection system, and landfill surface precludes ponding."

Second, the HRS score is based on incorrect assumptions about the aquifer of concern. These incorrect assumptions necessarily resulted in an incorrect determination of the size of the target population.

The scorer identified all waterbearing strata under the site as aquifers of concern. This conclusion appears to be based on the mistaken assumption that all waterbearing strata beneath the site are, as the scorer put it, "hydrostratigraphically connected." (See Exhibit B to Eldredge Report: "Documentation Records for Hazard Ranking System," p. 2) (hereinafter cited as HRS Documentation).

This assumption is not supported by the extensive research that has been done to date on the hydrogeology of the area in which the landfill is located. On the contrary, a comprehensive review of the existing literature on the subject, prepared by the Analytical Laboratory for Environmental Excellence, Inc. (attached as a supplement to these Comments) (hereinafter cited as the ALEX Report), indicates that in fact two distinct hydrological units exist under the site. These two units -- one a deep aquifer, and the other a shallow aquifer -- are separated by an aquitard system, which is itself comprised of two main members. The first is the Maquoketa Shale and associated shales, and the other is the Galena-Platteville Dolomite. The Maquoketa Shale unit is typically from 100 to 150 feet thick and is extremely impermeable. The dolomite formation, although slightly more permeable than the Maquoketa Shale, is typically 300 feet thick. There is ample evidence that this aquitard system is continuous throughout the region. (See ALEX Report pp. 1-3 and Opinion of P. Braam, Professional Geologist, pp. 9-1 through 9-9.)

Other evidence of the separation of these aquifers, in addition to the extensive data confirming the presence and continuity of the Maquoketa Shale formation, is found in the difference in piezometric levels and water quality between the two aquifers. (See ALEX Report pp. 3-9.)

The HRS scorer's assumption that all of the waterbearing strata beneath the site are hydrostratigraphically connected appears to be based on a misinterpretation of the references cited to support that assumption. For example, the scorer cited as a

reference several pages from a report by Piskin, et al., entitled "Groundwater Withdrawals from Aquifers in Illinois, with Emphasis on PWS Wells" (1981) (the "Piskin Report"). On page 6 of the Piskin Report there appears a table which purports to list "Aquifers of Illinois." The table lists the Maquoketa Shale as an aquifer, although a footnote to the table states that "over a larger portion of Illinois, the Maquoketa is more often considered an aquitard or a confining bed rather than an aquifer."

Similarly, while the scorer listed ten aquifers as "of concern," three of those listed, i.e., the Pennsylvanian, the Chesterian and the Valmeyeran do not occur anywhere near the 31st Street Landfill. Other errors in the scorer's interpretation of references cited in the HRS Documentation records are described in greater detail in the ALEX Report. (See ALEX Report, pp. 9-6 through 9-7.) As a result of these errors, the scorer erroneously assumed that all of the aquifers beneath the site are connected when in fact they are not.

The fact of the separation of the shallow and deep aquifers is significant because it indicates that any leachate leaving the landfill would enter only the shallow, upper aquifer. That aquifer is therefore the "aquifer of concern." And, with the exception of a few residential wells located nearby, nearly all of the wells located within several miles of the landfill draw water from the deep aquifer.

Because the HRS score is based on the erroneous assumption that all aquifers beneath the site are connected, determination of

the target population for scoring purposes was necessarily wrong, too.

In determining the population potentially at risk from groundwater contamination, the HRS uses a matrix which combines "the distance of a population from hazardous substances and the size of the population served by ground water that might be contaminated by those substances." (HRS Guidance at 797.) The score for the 31st Street Landfill for this factor is inaccurate for a number of reasons.

First, it is important to note that the HRS Guidance dictates that distances involved in determining a target population are to be measured from the hazardous substance. (See HRS Guidance at 797-800.) The substance erroneously labeled "hazardous" by the HRS scorer was the calcium oxide disposed of at the site in September, 1980. Although the calcium oxide load was used to determine the "Hazardous Waste Quantity" and "Waste Characteristics" factors, other factors such as "Depth to Aquifer of Concern" and target population figures appear to be based on the assumption that hazardous substances are present throughout the entire area of the landfill.¹⁰ In other words, the HRS scorer used the calcium oxide load as the "hazardous substance" of concern for certain scoring purposes, but not others. This is inconsistent with USEPA policy, as expressed in the HRS Guidance, that target factors and route characteristic factors be treated consistently.

¹⁰ For example, on page 2 of the HRS Documentation Record, the scorer states "lowest point of waste disposal/storage is unknown."

(HRS Guidance at 791.) Because the calcium oxide load was (incorrectly) used as the "hazardous substance" for calculating certain route characteristics, that same load, which was of a definite quantity and had a readily ascertainable disposal location in the landfill, should have been used in scoring all factors, including "depth to aquifer of concern" and "distance to nearest well." Instead, distances used to compute the score are based on the unwarranted assumption that hazardous substances are present throughout the entire landfill.

Even more serious, however, is the mistake that was made in calculating a target population. As noted above, in order to define a target population potentially at risk, the HRS determines the distance to the nearest well drawing from the aquifer of concern, and identifies the population served by that well. (See HRS Guidance at 797-800.) These Comments and the ALEX Report have demonstrated that the "aquifer of concern" beneath this site is the shallow aquifer. The HRS scorer identified Oak Brook Well #5 as the nearest well drawing from the aquifer of concern, and calculated the distance to that well as less than 2,000 feet. However, Oak Brook Well #5 is 1,503 feet in depth (ALEX Report, Table B) and draws water from the deeper sandstone formation. It does not draw from the aquifer of concern.

This error is a direct result of USEPA's mistaken conclusion that all waterbearing strata beneath the site are hydrostratigraphically connected and are therefore "of concern." Since only the shallow aquifer is "of concern," the well "of concern" and the population served by that well must, for scoring

purposes, be the nearest well drawing from the shallow aquifer. The nearest wells drawing from the shallow aquifer are the residential wells in the Hickory Lane subdivision. As Exhibit 8 indicates, use of the proper wells in calculating the "Target" section of the Ground Water Route Work Sheet reduces the site's HRS score below 10.0 even if the mistaken assumptions on which the "Waste Characteristics" score was based are left unchanged.

Use of any other wells in calculating the "Targets" section score of the Ground Water Route Work Sheet would violate USEPA's policy that "the same aquifer of concern must be used for all rating factors" (see 47 FR 31189), and that target and route characteristics must be treated consistently (HRS Guidance at 791). The scorer violated these policies when he used a well that does not draw from the aquifer of concern for scoring purposes. In addition, the scorer erred when he determined that the population potentially at risk from this landfill was 14,000. The scorer explained his use of the entire population of Oak Brook as the target population at page 5 of the HRS Documentation Record: "[T]he score obtained from the population served and the distance to the nearest well is maximized when considering only the City of Oak Brook." While the HRS Guidance instructs scorers to maximize some factors in scoring -- they are instructed, for example, to evaluate several hazardous substances and "take the substance with the highest [toxicity/persistence] score as representative of the potential hazard" -- it does not instruct them to maximize population served. In fact, the Guidance strictly prohibits this type of maximization: "[P]eople within three miles

[of the hazardous substance] who do not use water from the aquifer of concern are not to be counted" (HRS Guidance at 800).

There is another reason why only the Hickory Lane residential wells should be used in determining the target population. Numerous studies of the hydrology of the region in which this site is located indicate that the direction of groundwater flow in the shallow aquifer which underlies the site is to the south. (Groundwater Resources for DuPage County, Illinois, Cooperative Groundwater Report #2, Illinois Water Survey 1962, "Verification of the Potential Yield and Chemical Quality of the Shallow Dolomite Aquifer in DuPage county, Illinois," Illinois State Water Survey 1981, all cited in Eldredge, "Site Specific Hydrogeological Report for 31st Street and the Tollway Landfill," submitted to IEPA August 26, 1987). Recently, Sexton completed construction and sampling of a series of new wells at the site. Results of that investigation, presented in the Eldredge Report, confirm that the direction of groundwater flow beneath the site is consistent with that throughout the region, and is to the south.

The Oak Brook wells which were used to calculate the HRS "Targets" score are located approximately one-half mile due west of the site. Thus, in addition to the fact that those wells do not draw from the aquifer of concern, the population served by those wells should not have been counted for scoring purposes because those wells are not downgradient from the landfill. Of the other wells listed at page 5 of the HRS Documentation Record, only the two Western Springs wells are located southeast, and thus downgradient, of the landfill. And although these wells are

located within three miles of the landfill, they are 1256 feet and 1913 feet deep, finished in the deep sandstone aquifer. (See Eldredge Report, Exhibit C.) They do not draw from the aquifer of concern.

The Hickory Lane residential wells, on the other hand, are located downgradient of the landfill, and draw water from the aquifer of concern. The HRS scorer should have taken into account the known direction of groundwater flow and limited his determination of the potentially exposed population accordingly.

Early USEPA guidance on calculating the potentially exposed population noted that "[p]rovisions for limiting the area of concern based on flow are not included in the HRS." (47 FR 31190 (July 16, 1982)) Data on groundwater flow was excluded because

[i]n many instances the information is not available, and in others the flow direction varies. Even where there is extensive knowledge of geohydrology, interpretation is nearly always subject to dispute. Requiring a precise measure of the affected population would add inordinately to the time and expense of applying the HRS.

In this case, however, data on groundwater flow is readily available (see ALEX Report and Eldredge Report) and does not vary. Site-specific groundwater flow data is consistent with the extensive information that is available on the direction of groundwater flow in the shallow aquifer for the entire region. Consideration of the data would add nothing to the time and expense of applying the HRS and would in fact produce an HRS score that accurately reflects the low degree of risk to human health and environment posed by this site.

Furthermore, USEPA is now considering a revision to the HRS that would include a consideration of general groundwater flow direction data when determining the target population potentially affected by a release of hazardous substances. (See "Notice of Intent to Revise the Hazard Ranking System" 52 FR 11513 (April 9, 1987)). This change in USEPA policy indicates that the Agency recognizes the value of such data in improving the accuracy of the HRS. The groundwater flow data available for this site should have been included in the calculation of the "Targets" score. That data indicates that only those people living to the south, and thus, downgradient of the landfill, could possibly be deemed to be at risk.

IEPA should recalculate the HRS score for the 31st Street Landfill as shown in Exhibit 8 to correct the mistaken assumptions on which the 1985 score for the site was based.¹¹ The new score should take into account the fact that the load of calcium oxide disposed of at the landfill in September of 1980 was determined by IEPA to be non-hazardous, and that laboratory analysis of samples taken from the material did not detect any hazardous substances. In addition, the score should be recalculated taking into account

11 Although the Board's rule 750.440(d) states that the Agency is required to use the federal HRS in compiling the SRAPL, nothing in the Board's rules or in the Environmental Protection Act indicates that the IEPA is bound by a particular score previously determined by USEPA. Indeed, USEPA frequently recalculates scores in response to public comments (see, e.g., 52 FR 27625 (July 22, 1987)) and as noted above it would be arbitrary for IEPA to refuse to do so in this case.

the fact that it is the shallow aquifer which is the aquifer of concern, and that only a small population downgradient of the landfill can therefore be deemed to be at risk.

Failure to recalculate the score to take these corrections into account would render the IEPA's decision to propose this site for addition to the SRAPL arbitrary and capricious and an abuse of discretion.

B. Other Studies and Information Relating to the Site

Section 860.220(b)(2) provides that the Agency "shall consider" other studies and information relating to the sites, including but not limited to field inspection reports, monitoring data, permit application materials and research reports. Because the Agency has never provided Sexton with any written statement of the reasons for the proposed addition of the Hinsdale Landfill to the SRAPL, Sexton does not know whether the Agency considered any "other studies and information," the identity of any such studies and/or information, or what weight the Agency placed on such information in its decision to propose this site for addition to the SRAPL.

Sexton has received a copy of an Agency memorandum (see Exhibit 9) dated December 17, 1987, pertaining to the 31st Street Landfill, which states that "[t]he lack of a groundwater monitoring program and a potential release was reason for score the site (sic)." The memo goes on to note that "[t]he scoring qualifies the site for the SRAPL even though it was assumed there was as yet no observed release." This suggests that the HRS score formed the

sole basis of the Agency's decision to propose the site for addition to the SRAPL.

Yet, the memo also contains the following statement with respect to groundwater flow data:

The data submitted by Eldredge engineering indicates that regionally, groundwater is moving to the south and east. This doesn't consider the site specific geology. The Agency's opinion is that the out wash units groundwater is flowing to the north and northwest toward the axis of the Bedrock Valley and that the bedrock aquifer flows to the north and east.

This suggests that the Agency has taken some other information into account in deciding to propose this site for addition to the SRAPL.

Because the Agency memo is the only written statement of the Agency's position on this landfill that Sexton has received to date, the memo is worthy of careful review.

The Agency memo contains a number of factual errors concerning the site. The memo states that the site is "over 300 acres" in size; in fact it is 275 acres. The memo states that final cover and final vegetative cover were applied in 1985; final cover was not applied until 1986. The memo states that the site "began operations . . . in an area which was thought to be a small sand and gravel quarry as well as a rock quarry"; as the original application for an operating permit for this site indicates, the site had not been used as a quarry. (See Exhibit A to "Eldredge, Site Specific Report for 31st Street and the Tollway Sanitary Landfill," submitted to IEPA August 26, 1987.) The memo indicates that "Municipal and Commercial waste was deposited at the site";

because the memo does not define "Commercial" waste, Sexton has no way of knowing what is meant by the term.

The memo states that three of the four monitoring wells on site are "perennially dry," but fails to point out that the locations and depths of those wells were dictated by IEPA in 1974. The memo states that the "outwash units and the Bedrock are major sources of drinking water in Northeastern Illinois," yet ignores the fact that water from Lake Michigan and the deeper aquifer under the area are in fact the major sources of drinking water in Northeastern Illinois, as the shallow aquifer is an unreliable source both in terms of the quality and the quantity of water that is drawn from it.

More important, however, is the statement that it is the "Agency's opinion" that groundwater in the shallow aquifer flows to the north. Sexton assumes that this opinion is based on the information set forth in the attachments to this Agency memo.

The first attachment which apparently relates to this opinion is a drawing of the site with the handwritten notation "Groundwater Data From 1964 Borings." (See Exhibit 9, p. 4.) This drawing purports to show the direction of groundwater flow under the landfill. It was prepared from a map showing the locations of soil borings done in 1964, which map was included as Exhibit G-1 in Eldredge, "Site-Specific Report for 31st Street and the Tollway Sanitary Landfill" of August, 1987 (and which is included again here as Exhibit 10), and from logs of the 1964 borings. Use of soil boring logs to determine piezometric head is inappropriate. The 1964 borings were made to establish a profile of the soils

which underlay the site, not to determine the level or direction of groundwater flow. Determining piezometric head requires installation of wells and sampling only after sufficient time has elapsed after drilling to allow the water level in the well to stabilize. The soil borings taken in 1964 were never intended to be used as evidence of piezometric head and cannot be used for those purposes today.

Similarly, the attachment marked "Estimate of G.W. Flow Map -- 1972" consists of a map showing the locations of soil borings made in 1972 to obtain an updated soil profile, but used by the Agency as evidence of the direction of groundwater flow in the southern half of the landfill.

Thus, the Agency's opinion concerning the direction of groundwater flow at the site is based on irrelevant soil boring data rather than data obtained through monitoring wells specifically installed to determine piezometric head. In addition, this data has been superseded by the more recent site-specific investigation performed by Eldredge Engineering, the results of which are presented in the Eldredge Report.

The Agency should consider this more recent investigation of the direction of groundwater flow in the shallow aquifer beneath the site. This investigation is based on the samples taken from wells recently installed on site and indicates that groundwater flows to the south throughout the entire area beneath the site, and not to the north as the Agency suggests. The Agency should also consider the exhaustive review of the hydrogeology of the region contained in the ALEX Report. That report demonstrates

that there are in fact two distinct aquifers below the 31st Street Landfill, as evidenced by the continuity of the aquitard beneath the site, the differences in piezometric levels between the two aquifers, the differences in water quality between the two, and the evidence of the dry nature of the Galena-Platteville dolomite.

The Agency's new rule for determining what sites will be added to the SRAPL mandates that the Agency "shall consider" other studies and information relating to the site. The Agency therefore has a duty to consider the reports of investigations submitted by Sexton as part of the Comments, in determining whether this landfill should be added to the SRAPL. These reports, which demonstrate that a natural, impermeable barrier protects the deep aquifer, and that groundwater flow through the shallow aquifer is to the southeast, indicate that listing this site on the SRAPL is not warranted.

C. Type of Remedial Action Required and the Availability of Funds to Undertake Such Remedial Action

As noted above in Section II, in order to consider "the type of remedial action required," the Agency must already have determined that some remedial action is necessary and what that remedial action will be. According to the Illinois Environmental Protection Act,

REMEDIAL ACTION means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of hazardous substances into the environment. Ill. Rev. Stat. ch. 111½ § 1003.34.

The Agency cannot yet have come up with a "permanent remedy" for a site at which the existence of a problem has not yet been established.

Putting aside for a moment the fact that consideration of this factor is surely more meaningful when prioritizing those sites already on the list than when determining whether to list a site at all, the Agency appears to have already made a determination as to what action should be undertaken at the Hinsdale site, although that action does not constitute a remedial action as defined under the Act. The Agency's memorandum on this site (see Exhibit 9) makes the following "Recommendations":

It is the Agencys (sic) position that an upgraded groundwater monitoring program should be implemented. This program should include a series of cluster wells completed in the bedrock and the shallow outwash units.

If the installation of a series of wells is considered by the Agency to be a "remedial action," then, according to rule 860.200(a), the Agency must have "considered" it in deciding to propose the site for addition to the SRAPL. Yet, it is not clear from the notice of the proposed addition of this site just what the Agency "considered" about this "remedial action." Surely the installation of a system of wells is not as serious or urgent an undertaking as, for example, onsite treatment or incineration of hazardous substances, or the repair and replacement of leaking containers, activities which are "remedial actions" under the Act.

Further, it is not clear whether the Agency considered "the availability of funds to undertake such remedial action," or whether or why the Agency believes that an expenditure of State

funds would be necessary to implement this "remedial action." Without more explanation from the Agency, Sexton and other members of the public cannot determine what consideration the Agency gave to the third factor listed at 860.220(b).

D. The Relative Risks to Public Health, Welfare or the Environment Posed by the Sites

The only available statement of the Agency's position concerning its consideration of this factor is the discussion in the Agency's memo (see Exhibit 9) of one set of sampling results which detected low levels of methylene chloride and phthalates. The memo suggests that the Agency views these results as evidence of a "potential release."

However, the Agency concedes in its memo that these sampling results are "preliminary" and "could be due to lab contaminants." Furthermore, the Agency for Toxic Substances and Disease Registry ("ATSDR") reviewed these sampling results and concluded that there are "no long-term health concerns for the residents from daily consumption of these water supplies." (See Exhibit 11; ATSDR memorandum of 1/14/87.) Finally, there is no evidence establishing a relationship between landfilling activities and these suspect sampling results.

More importantly, the fact that in the Agency's opinion there is or may be a "potential release" at the site cannot qualify the site for listing on the SRAPL. The Agency's own rule indicates that a site shall not be listed if there is no "release or substantial threat of a release" (35 Ill. Adm. Code § 860.

200(b)(3)). A "potential release" simply is not the same thing as a "substantial threat of a release."

There is no evidence to indicate that there is a release or substantial threat of a release of hazardous substances at this site. In late 1986 USEPA sampled the residential wells located immediately adjacent to the landfill which draw water from the shallow aquifer. It was these results which the ATSDR determined posed no long-term health threat to persons drinking this water. Sexton took its own samples in 1986, in conjunction with USEPA's sampling program. Neither set of results indicated that the quality of the groundwater had been affected by the landfill.

Subsequent to USEPA's sampling program, IEPA conducted an additional round of sampling of the residential wells and Sexton split samples with the Agency. The results of these samples were satisfactory, again indicating that the landfill had not caused any degradation in groundwater quality. Residents were notified by letter from IEPA of these satisfactory results (see, e.g., Exhibit 12.)

Recently, samples taken from two nearby wells indicated the presence of low parts per billion of vinyl chloride. A sample taken from a third well contained low parts per billion of 1-1-1 dichloroethane. These results are preliminary; additional samples are being collected and analyzed to verify the presence or absence of these substances. Sexton will submit a report of the results of this supplemental investigation shortly.

In any event, even if these substances are present in certain wells, there is no evidence linking the presence of these

substances with the landfill. Finally, the presence of two different substances in wells located within extremely close proximity to one another cannot support a finding that there is a plume emanating from the landfill. Such a situation would suggest instead that the presence of these substances is attributable to a number of sources.

In short, the data upon which the Agency based its opinion that there exists a "potential release" at the site was, by the Agency's own admission, "preliminary" and possibly "due to lab contaminants." Even if contaminants were present, their presence was found by USEPA to pose no long-term threat to public health. More recent sampling results do not constitute evidence of the "substantial threat of a release of hazardous substances" necessary to list this site on the SRAPL.

- E. Other factors relating to the sites, including but not limited to whether responsible parties are willing to voluntarily undertake remedial action, the availability of state resources to manage remedial action, pending enforcement actions, or the applicability of other regulatory requirements to the site.

Sexton cannot determine, from the Agency memo or the notice of proposed listing of this site, whether and in what manner the Agency considered any of the issues listed in this final factor. A consideration of just two of the issues listed in this subsection indicates that the 31st Street Landfill should not be added to the SRAPL.

1. Willingness of responsible parties to undertake remedial action

As Sexton has already noted in Section II of these Comments, it is difficult to imagine how the Agency might consider the

willingness of responsible parties to undertake remedial action at the time a site is proposed for addition to the SRAPL. The very purpose of listing a site on the SRAPL is to determine whether remedial action is necessary at all. Nevertheless, in its memorandum on the 31st Street Landfill, the Agency recommended that an upgraded groundwater monitoring program be implemented at the site. Without conceding that any remedial action is necessary at the site, that implementation of a groundwater monitoring plan is properly characterized as remedial action, or that it is in any way responsible for implementing any "remedial action," Sexton wishes to make the record clear that it is willing to implement an upgraded groundwater monitoring program. Sexton has designed such a program and submitted it on March 1, 1988 for Agency approval as part of Sexton's amended post-closure plan for this site. This monitoring program was designed to fulfill the requirements of subpart C of Part 807 of the Illinois Pollution Control Board's regulations governing solid waste.

In addition, Sexton has already made clear to the Agency and to the residents of the Hickory Lane subdivision its willingness to provide an alternate water source for those residences. Sexton has outlined some of those plans in a letter to the Agency dated February 10, 1988. (See Exhibit 13.) The rest of those plans -- namely, Sexton's intent to provide a water line to the subdivision by which those residences will obtain water from the Village of Westchester -- were outlined in a meeting with Hickory Lane homeowners on February 16, 1988, at which several IEPA representatives were present.

Sexton has undertaken these measures at the request of IEPA and in spite of the fact that there is currently no evidence that the 31st Street Landfill is the source of any constituents that have been detected in any wells.

Thus, Sexton is willing to undertake certain measures which might be characterized as "remedial" in spite of the fact that there is no evidence of a release or substantial threat of a release of hazardous substances from the landfill. The 31st Street Landfill is therefore an inappropriate candidate for addition to the SRAPL. As the Agency stated in the notice which accompanied the SRAPL rule when it was adopted, the list "sets forth those sites at which the Agency expects to undertake remedial action." (See Illinois Register, July 24, 1985 at 12276-78.) Where potentially responsible parties are willing to undertake remedial action at a site, the site should not be listed. This is consistent with USEPA policy according to which sites that are subject to the corrective action provisions of RCRA are not listed on the NPL unless owners and/or operators of those sites are unwilling to undertake corrective measures. (See 51 FR 21057 (June 10, 1986)).

2. Applicability of other regulatory requirements to the site

The post-closure care of sanitary landfills is regulated under a comprehensive set of rules and regulations promulgated by the Board. As noted above, Sexton is required under the Board's regulations to submit a detailed plan for post-closure care of this site and to provide adequate financial assurance that each

step required under the plan will be carried out. The Board's regulations provide that the "owner or operator of a sanitary landfill shall monitor gas, water and settling at the completed site for a period of five years after the site is completed or closed," and require owners or operators to "take whatever remedial action is necessary to abate any gas, water or settling problems which appear during the five year period." (35 Ill. Adm. code § 807.318) Further, the standard for closure of a sanitary landfill requires the operator of a waste management site to close the site "in a manner which controls, minimizes or eliminates post-closure release [of] . . . leachate . . . to the groundwater . . . to the extent necessary to prevent threats to human health or the environment." (Id. at § 807.502(b)).

Thus, a groundwater monitoring program is already required under the Board's comprehensive solid waste regulations, and will be implemented as part of Sexton's amended post-closure plan under § 807.523, which must be submitted to the Agency for approval. Where, as here, the very result which the Agency seeks to accomplish through the addition of a site to the SRAPL is already required under existing regulations, addition of the site to the SRAPL would be inappropriate and would constitute an abuse of the Agency's discretion.

IV. ADDITION OF THE 31ST STREET LANDFILL TO THE SRAPL IS PRECLUDED BY RULE 860.200(b)

Under rule 860.200(b)(1), "the Agency shall not list a site on the SRAPL [i]f the site scores less than 10.0 using the Federal [HRS]." These Comments have demonstrated that the 31st Street Landfill was incorrectly scored under the HRS. A recalculation of the score for the site (see Exhibit 8) yields an HRS score below 10.0. The site therefore may not be listed on the SRAPL.

In addition, rule 860.200(b)(3) indicates that even if a site scores above 10.0, such site shall not be listed "[i]f the Agency determines, through site evaluations, that there is no release or substantial threat of a release into the environment of any hazardous substance, or any pollutant or contaminant which may present an imminent or substantial danger to public health or welfare."

The Agency's memorandum on this site refers to a "Potential release" and "the lack of a groundwater monitoring program." As Sexton has demonstrated at Section III D. of these Comments, however, the data to which the Agency memo referred were suspect and were found by the ATSDR to pose no long-term threat to human health. Further, a "potential release" does not constitute a "substantial threat of a release into the environment of any hazardous substance, or any pollutant or contaminant which may present an imminent or substantial danger to public health or welfare." The evidence simply does not indicate that there exists any "substantial threat" of such a release at this site.

Similarly, while the lack of a groundwater monitoring program may be evidence of a lack of information about a site, it is not evidence of a substantial threat of a release. USEPA treats a lack of information as just that -- a lack of information -- and nothing more. For example, where information is lacking about a particular site, the HRS Guidance requires that the factor for which information is missing be given a score of zero. Indeed, in an early policy statement on use of the Hazard Ranking System, USEPA specifically stated that "[t]he HRS is to be applied only where adequate data exist" (47 FR 109878 (March 12, 1982)).

While a recalculation of the HRS score for this site is in itself enough under rule 860.200(b)(1) to preclude addition of this site to the SRAPL, proper consideration of the data and reports submitted with these Comments should lead the Agency to determine that there is no release or substantial threat of a release of any hazardous substance or pollutant or contaminant which may present an imminent or substantial danger to public health or welfare. Under rule 860.200(b), this site may not properly be added to the SRAPL.

- V. THE 31ST STREET LANDFILL SHOULD NOT BE LISTED BECAUSE POST-CLOSURE CARE AND PERMIT REQUIREMENTS IMPOSE THE SAME TYPES OF REQUIREMENTS AS REGULATIONS UNDER RCRA AND IT IS USEPA'S POLICY NOT TO LIST SITES ON THE NPL THAT ARE REGULATED UNDER RCRA.

RCRA regulates facilities at which hazardous substances have been treated, stored or disposed. Under the corrective action provisions of that statute, those facilities which have or are

seeking a RCRA permit (including a RCRA closure or post-closure permit) can be required to undertake response or remedial measures whenever there is a release or substantial threat of a release from the facility. Accordingly, it is USEPA's policy that where there is a release or substantial threat of a release of a hazardous substance from a facility that is regulated under RCRA, the site will not be included on the NPL but will instead be addressed under the RCRA corrective action provisions. (See 48 FR 40658-59; 51 FR 21054-62.) Under this policy, RCRA sites may be listed on the NPL only if they meet all of the other criteria for listing (i.e., if they receive an HRS score of 28.5 or higher) and if they fall into one of the following categories:

- 1) Facilities owned by persons who are bankrupt;
- 2) Facilities that have lost their authorization to operate under RCRA;
- 3) Facilities whose owners or operators have shown an unwillingness to undertake corrective action.

52 FR 27626-27 (July 22, 1987).

The reason for this policy is that RCRA and its accompanying regulations provide an alternate authority to ensure cleanup of releases of hazardous substances. The RCRA regulations

give EPA and the States authority to control active sites through a broad program which includes monitoring, compliance inspections, penalties for violations, and requirements for post closure plans and financial responsibility. RCRA regulations require a contingency plan for each facility. The regulations also contain Groundwater Protection Standards . . . that cover detection monitoring, compliance monitoring (if groundwater impacts are identified) and corrective action.

To Sexton's knowledge, the IEPA has no similar written policy which generally counsels against listing on the SRAPL those sites regulated under other Illinois environmental regulations. However, because the Board's solid waste regulations provide the same type of authority to ensure corrective action at sanitary landfills as do the RCRA regulations for hazardous waste facilities, and because the 31st Street Landfill is subject to those regulations, the IEPA should not list the site on the SRAPL.

Like RCRA and its implementing regulations for hazardous waste facilities, the Illinois Environmental Protection Act and the Board's solid waste regulations provide the authority to control sanitary landfills through a broad program which includes monitoring (§§ 807.317 and 807.318), compliance inspections (Illinois Environmental Protection Act § 21 (p)), penalties for violations (§§ 31.1, 42 (b)(4) of the Act), and requirements for post closure plans and financial responsibility (§§ 807.501, 807.524, 807.600 - 807.666). Further, like the RCRA regulations, the Board's regulations require site owners or operators to file closure and post-closure care plans which describe the steps that will be undertaken to correct problems that occur during the closure or post-closure periods, and these plans become part of the facility's permits (§§ 807.503, 807.503, 807.524). Finally, like the RCRA corrective action provisions, the Board's regulations require owners or operators to "take whatever remedial action is necessary" to correct any problems which appear during the closure or post-closure periods (§ 807.318(b)).

These regulations, with which the 31st Street Landfill must comply, provide the same type of comprehensive, alternate authority to assure that remedial action will be undertaken at sanitary landfills as RCRA regulations provide for hazardous waste facilities. Consistent with USEPA policy, IEPA should not list sites like the 31st Street Landfill which are subject to those comprehensive regulations. Indeed, the Agency's own rule for determining which sites to list seems to contemplate an exclusion from listing for those sites subject to such comprehensive regulation at § 860.220(b)(5), which states that the Agency shall consider "the applicability of other regulatory requirements to the site."

CONCLUSION

The process by which sites are added to the Illinois SRAPL infringes upon the constitutional rights of owners and operators of sites throughout the state. The factors set forth in the Agency's recently amended rule do not provide a rational basis for determining which sites should be added.

Further, application of those factors to the 31st Street Landfill indicates that the site should not be listed. The HRS score is based on erroneous assumptions. The waste used to evaluate the "most hazardous substances that could migrate" from the facility was not hazardous. The scorer assumed that all waterbearing strata beneath the site are connected when in fact they are separated by an aquaclude.

Other studies and information relating to this site indicate that the direction of groundwater flow beneath the site is to the south. As a result, only a very small population might be

affected by the potential migration of any substances from the landfill.

There is currently no evidence that this site poses a threat to public health or the environment. Further, this site is already subject to regulation under the Board's comprehensive solid waste regulations. The 31st Street Landfill is therefore an inappropriate candidate for addition to a list which is supposed to represent those sites "which appear to present a significant risk to public health, welfare or the environment," and at which the Agency expects to undertake remedial action" (Notice of Adoption of SRAPL, Illinois Register, July 24, 1985, at 12278) (emphasis added). This site should not be listed.

JOHN SEXTON SAND & GRAVEL CORP.

By: 
One of its attorneys

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Nancy M. Kollar
WINSTON & STRAWN
One First National Plaza
Suite 5000
Chicago, Illinois 60603
(312) 558-5600

Mary E. Drake
Staff Counsel
John Sexton Contractors Co.
1815 South Wolf Road
Hillside, Illinois 60162
(312) 449-1250

NMK/009/D11/02:28:88

INDEX OF EXHIBITS
31ST STREET LANDFILL

<u>Exhibit No.</u>	<u>Title</u>
1	1969 Court Decree
2	IEPA Letter to Sexton dated December 23, 1987; Illinois Register, January 4, 1988, pp. 94-98
3	Sexton Letter to USEPA Region V dated June 9, 1981
4	IEPA Letter to Mr. Ray Albrecht of Western Electric Co. dated October 20, 1980
5	IEPA Letter to John Sexton Sand & Gravel Corp. dated October 9, 1980
6	Three IEPA Special Analysis forms dated September 10
7	Walter H. Flood & Co., Inc., Soil Investigation No. 7205-0010
8	Alternative Recalculations of HRS Ground Water Route Work Sheet
9	IEPA Memorandum to Monte Nienkirk dated December 17, 1987
10	Map of Subsurface Investigation prepared by Eldredge Engineering Associates, Inc.
11	Department of Health & Human Services Memorandum From Toxicologist, Office of Health Assessment, regarding Sexton Landfill, dated January 14, 1987

12

IEPA Letter to Mr. George
Lamperc dated March 30,
1987

13

Sexton Letter to Mr. Monte
Nienkirk, IEPA, dated
February 10, 1988

EXHIBIT 1

1969 COURT DECREE

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

IN THE CIRCUIT COURT FOR THE EIGHTEENTH
JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

VILLAGE OF OAK BROOK, a)
Municipal corporation of)
the State of Illinois,)

Plaintiff,)

vs.)

JOHN SEXTON SAND & GRAVEL CORP.,)
an Illinois corporation and)
THE CATHOLIC BISHOP OF CHICAGO,)
a corporation sole,)

Defendants.)

IN CHANCERY
NO. 67-396-G

FILED
Oct 7 11 42 AM '69
Clerk of the Circuit Court
Du Page County, Illinois

D E C R E E

This cause coming to be heard in accordance with agree-
ment reached by and between the VILLAGE OF OAK BROOK, a Municipal
corporation, plaintiff, and JOHN SEXTON SAND & GRAVEL CORP., an
Illinois corporation ("SEXTON"), and THE CATHOLIC BISHOP OF
CHICAGO, a corporation ("CATHOLIC BISHOP"), defendants, by their
respective attorneys, and the Court having examined the Complaint
herein, having heard arguments of counsel and being advised in
the premises;

It appears to this Court as follows:

1. It has jurisdiction of the parties and the subject
matter of these proceedings.

2. CATHOLIC BISHOP is the owner of certain real
estate of approximately 320 acres, more or less, lying and ad-
jacent to and immediately East of the Illinois Tri State Tollway
and bounded on the North by Cermak Road and on the South by 31st
Street.

3. SEXTON is the lessee of said premises for the purpose of operating a sanitary land fill thereon.

4. Refuse disposal presents serious public health and welfare problems to all urban areas. At present many communities make use of the above described site for their refuse disposal.

5. The above described refuse disposal site is located in whole or in part within one mile of the Villages of Oak Brook, Westchester, Hillside and Western Springs.

6. Sanitary land fill is a recognized method of refuse and garbage disposal. It is a method by which garbage, rubbish and ashes may be disposed of without nuisance, fire or public health hazard. When properly operated, it eliminates the various noxious and unpleasant features of the old fashioned "open dump." The method includes the following features:

a. Deposit of refuse in layers of not more than 6 feet after compaction;

b. Covering refuse each day with layers of from 6 inches to 1 foot of clean earth;

c. Providing cover of not less than 5 feet of clean earth at the end of the operation;

d. Limiting the area in which refuse may be deposited in the course of any single day;

e. Keeping said limited area carefully free of water by use of pumps and otherwise to eliminate problems of air pollution, rodents, flies and unsightliness;

f. Prohibiting open fires;

g. Fire fighting equipment readily available for prompt extinction of accidental fires;

h. Utilizing sprinkling equipment to keep dust down on roads on dry days;

i. Providing fences, berms, landscaping and other methods to screen the operation from neighbors and the public;

j. Providing active professional rodent control;

k. Establishing final grade which is not such as to clash with or prejudice uses and values of neighboring and nearby properties.

7. Section 27 of Chapter 100 1/2 of Illinois Revised Statutes, 1967, provides in part as follows:

"It is unlawful for any person to dump or place any garbage or other offensive substance within the corporate limits of any city, village or incorporated town other than (1) The city, village or incorporated town within the corporate limits of which, such garbage or other offensive substance shall have originated, (2) A city, village or incorporated town which has contracted with the city, village or incorporated town within which the garbage has originated, for the joint collection and disposal of garbage; nor shall any such garbage or other offensive substance be dumped or placed within a distance of one mile of the corporate limits of any other city, village or incorporated town."

8. The above described real estate is located in an unincorporated portion of Cook County, Illinois.

9. The said real estate is presently zoned under the zoning ordinance of Cook County as R-3 Single-Family Residential and is within one mile of plaintiff. Plaintiff contends that the deposit of refuse is not a permitted or a special use in such

district under the provisions of said zoning ordinance and that the deposit of refuse therein is also prohibited by Chapter 100 1/2, Sections 26 and 27 of the Illinois Revised Statutes. The defendants nevertheless contend that they have a legal right to use said premises for said purpose by reason of a legal non-conforming use based on the continuous use of said premises for refuse disposal, beginning approximately in the year 1931, that is, prior to the enactment of the first Cook County zoning ordinance in 1940, and that said section of Chapter 100 1/2 of the Illinois Revised Statutes does not apply to their operation. Plaintiff has controverted the foregoing contention but is prepared to concede the legal right of defendant to use said real estate for a sanitary land fill operation provided defendants agree to conform to the standards of operation hereinafter set forth.

10. In order to assure that the operations at the above described site shall continue to be conducted at all times in a manner which shall create no nuisance, the parties agree that this Court may appoint an engineer acceptable to the Court and to all parties, who shall inspect the operation at such times as seem fit to him and as the Court may deem proper, and who shall have the authority to give such directions as may seem appropriate and necessary to him. Said engineer shall be deemed to be an officer of this Court. His compensation and expenses shall be taxed as costs of these proceedings, to be paid by defendants.

NOW, THEREFORE, BY AGREEMENT OF THE PARTIES, IT IS ORDERED AS FOLLOWS:

A. The sanitary land fill being presently operated by SEXTON on the aforesaid real estate owned by CATHOLIC BISHOP

is legal, is not in violation of any laws applicable thereto and does not constitute a nuisance and shall in no way be interfered with provided, and as long as, it is conducted in accordance with the standards and subject to the controls hereinafter set forth.

B. CATHOLIC BISHOP and SEXTON are hereby permitted to operate the said sanitary land fill operation on the said premises subject to their continuing conformance with the following standards and conditions:

a. Depositing refuse in layers of not more than 6 feet after compaction;

b. Covering completed layers and side slopes at the end of each day with layers of not less than 6 inches to one foot of earth;

c. Providing final cover of not less than 5 feet of clean earth at the end of the operation and establishing and maintaining a finished slope on the outside perimeter of not more than one foot vertical to four feet horizontal and on the balance of the property not more than one foot vertical to twenty feet horizontal;

d. Limiting the area in which refuse may be deposited in the course of any single day;

e. Keeping the dumping area reasonably free of water at all times by use of pumps and otherwise;

f. Prohibiting open fires;

g. Keeping fire-fighting equipment available at all times upon the premises for prompt extinction of all fires;

h. Utilizing sprinkling equipment to keep dust down on roads;

i. Providing fences, landscaping and berms in order to screen the operation to the greatest extent possible from view from outside the property lines of the aforesaid property. (The existing berm along the southerly edge of Area 4 on 31st Street, as shown on Court's Exhibit 1 (see subparagraph k below), shall be extended northward along the westerly perimeter of said Area 4 at substantially the same height and grade as the aforesaid existing berm along 31st Street, said extension to be at said height and grade to a point approximately 300 feet south of Area 1; from said point the said berm shall continue to be extended northward to the junction of Areas 4 and 1, but the height and grade shall taper down to meet the grade of Area 1 at said junction. All exterior portions of said berm on the external perimeter of Area 4 and all portions of Area 1 (except those portions already covered with black dirt and seeded) shall be covered with at least (6) inches of black dirt and properly seeded so as to provide a grass cover. In addition, not less than a total of Two Thousand (2,000) trees and bushes not less than two (2) feet in height at time of planting shall be planted intermittently on Area 1 and on said berm on the perimeter of Area 4 in order to create an esthetically pleasing view from the west and south of the premises. The following types of bushes may

be planted: honeysuckle, red twig and yellow twig dogwood and lilac. The following types of trees may be planted: cottonwood, willow, oak and maple. All such landscaping shall be maintained by defendants and renewed when necessary. The above described extension of the berm and landscaping shall be performed on the following schedule:

i. Commencement of berm construction -- within ten (10) days of entry of this decree.

ii. Completion of berm construction, including addition of six (6) inches of top soil -- July 31, 1970.

iii. Completion of planting of grass, trees and bushes on completed berm -- November 15, 1970.

iv. Completion of planting of grass, trees and bushes on Area 1 -- November 15, 1969).

j. Causing an examination of the site to be made periodically and not less frequently than twice a month by a professional rodent contractor and taking prompt and effective measures to insure that rodents shall not exist at the site;

k. Complying with the requirement and provisions of Court's Exhibit 1, identified by the signatures of the attorneys of all the parties and admitted into evidence, said

Exhibit showing the following areas;

1. The completed area;
2. The area in which sanitary land fill may be operated only through November 30, 1970; commencing December 1, 1970 only dry fill operations shall be permitted;
3. The area which consists of existing slopes or slopes which will be created from the filling of Area 2, said slopes rising from present existing grade to final grade -- the filling of said slopes to be completed as Area 6 is filled;
4. Area for dry fill operations only;
5. 200 feet of tree reserve;
6. Area for sanitary land fill/ ^{without} ~~with~~ time restriction.
~~Area 2 is to be completed~~

1. Permitting periodic inspections to be made by the building inspector or other official of the Village of Oak Brook to be appointed by said Village for that purpose to check the compliance by the defendants with the foregoing performance standards only at reasonable times during the day.

C. The Court hereby appoints Orville Meyer
_____ as the engineer to perform the functions described in paragraph 10 of the recitals of this decree.

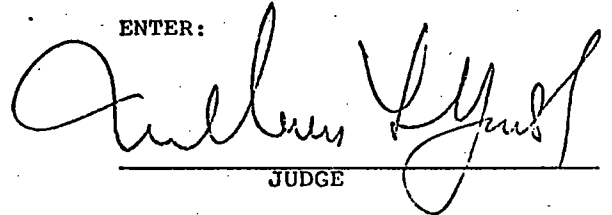
BOOK 533 PAGE 931

D. Defendants shall pay plaintiff's reasonable attorneys fees in connection with these proceedings in an amount not to exceed Ten Thousand (\$10,000.00) Dollars in accordance with statements to be submitted by plaintiff to defendants.

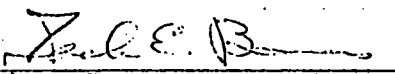
E. This Court hereby retains jurisdiction of the parties and the subject matter of these proceedings.

Dated: Oct 3, 1969

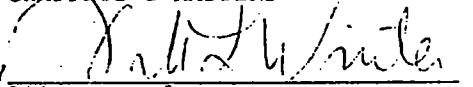
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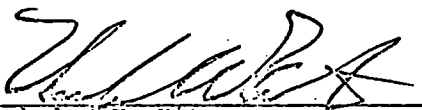

JUDGE

APPROVED:

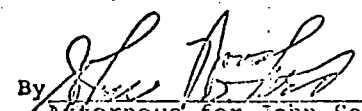

Jack F. Bowers
Attorney for
Village of Oak Brook

KIRKLAND, ELLIS, HODSON,
CHAFFETZ & MASTERS

By 
Attorneys for
The Catholic Bishop of Chicago


Nicholas T. Kitsos
Attorney for
Village of Oak Brook

RATHJE, WOODWARD & DYER

By 
Attorneys for John Sexton Sands
Gravel Corp. and The Catholic
Bishop of Chicago

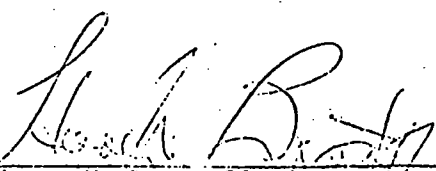

Harry M. Brosloff
Attorney for John
Sexton Sands & Gravel Corp.

EXHIBIT 2

IEPA LETTER TO SEXTON DATED DECEMBER 23, 1987;

ILLINOIS REGISTER, JANUARY 4, 1988, PP. 94-98



217/782-6761

Refer to: LPC #0314520001 -- Cook County
Sexton Hinsdale Landfill
Superfund/General Correspondence

LPC #0311800001 -- Cook County
Sexton Matteson Landfill
Superfund/General Correspondence

December 23, 1987

Mr. Joseph R. Benedict, Jr.
John Sexton Contractors Company
1815 South Wolf Road
Hillside, IL 60162

Dear Mr. Benedict:

As a potential responsible party of the facility indicated in the above heading, you are hereby notified that this facility is listed on the proposed State Remedial Action Priorities List (SRAPL) which is being published in the Illinois Register on January 04, 1988. The purpose of the SRAPL is primarily to serve as an informational tool for use by the Agency in identifying sites that appear to present a significant risk to public health, welfare and/or the environment.

The initial identification of a site on the SRAPL is intended to guide the Agency in determining which sites warrant further investigations designed to assess the nature and extent of the risks associated with this site. These investigations will determine what State-financed remedial action, if any, may be appropriate.

Enclosed is a copy of the proposed rule. If you have any questions regarding the SRAPL, please contact this office.

Sincerely,

Monte M. Nienkerk, Manager
State Site Management Unit
Remedial Project Management Section
Division of Land Pollution Control

MMN:tk:4/25/13-2(12/15/87)

Enclosure

cc: Division File
Maywood Region
Jim Frank
Gary King
Greg Michaud
Donald Massaro
Trust #21247

ILLINOIS REGISTER

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

**TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL**

**CHAPTER II: ENVIRONMENTAL
PROTECTION AGENCY**

**PART 860
STATE REMEDIAL ACTION PRIORITIES LIST**

SUBPART A: GENERAL

Section
860.100 Purpose
860.110 Application
860.120 Definitions
860.130 Publication of the State Remedial Action Priorities List

SUBPART B: LISTING OF SITES

Section
860.200 Basis for Listing Sites on the State Remedial Action Priorities List
860.210 State Remedial Action Priorities List
860.220 Determining Priorities for Remedial Action Among Sites Listed on the State Remedial Action Priorities List

SUBPART C: DELETION OF SITES

Section
860.300 Basis for Deleting Sites from the State Remedial Action Priorities List

AUTHORITY: Implementing and authorized by Section 4 and Section 22.2(d) of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1004 and 1022.2(d)) and 35 Ill. Adm. Code 750.440(d).

SOURCE: Adopted at 9 Ill. Reg. 12276, effective July 24, 1985; amended at 10 Ill. Reg. 4226, effective February 26, 1986; amended at 11 Ill. Reg. 12232, effective July 9, 1987; amended at __ Ill. Reg. ____, effective ____.

ILLINOIS REGISTER

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

Section 860.210 State Remedial Action Priorities List

GROUP 1

Site Name	City	County
Brockman No. 1	Ottawa	LaSalle
Koppers Co.	Carbondale	Jackson
Hopkins Chemical Co.	Atlanta	Logan
Modern Plating	Freeport	Stephenson
St. Louis Army Supply Center	Granite City	Madison
Sauget Sites	Cahokia/Sauget	St. Clair
H & L Landfill # 1	Danville	Vermillion
Sherex Chemical	Mapleton	Peoria
Carpentersville Waste Site	Carpentersville	Kane
Thomas 12th Street Landfill	Danville	Vermillion
Quincy Municipal Landfill #2 and #3	Quincy	Adams
Steagal Landfill	Galesburg	Knox

GROUP 2


Site Name	City	County
Frinks Industrial Waste	Pecatonica	Winnebago
Firestone Tire	Quincy	Adams
Escast	Addison	DuPage
Stauffer Chemical	Chicago Heights	Cook
Moss American	Sauget	St. Clair

ILLINOIS REGISTER

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

GROUP 3

<u>Site Name</u>	<u>City</u>	<u>County</u>
<u>Behn Drum</u>	<u>Marengo</u>	<u>McHenry</u>
<u>Bennitt Landfill</u>	<u>Rockdale</u>	<u>Will</u>
<u>C.L. Hale Septic Cleaning</u>	<u>Wilmington</u>	<u>Will</u>
<u>Cargill Chemical Products</u>	<u>Chicago Heights</u>	<u>Cook</u>
<u>Caterpillar Tractor Company</u>	<u>Joliet</u>	<u>Will</u>
<u>J.J. Schultz Containers</u>	<u>Lemont</u>	<u>Cook</u>
		
<u>Lanson Chemical Division</u>	<u>E. St. Louis</u>	<u>St. Clair</u>
<u>Morrison City Dump</u>	<u>Morrison</u>	<u>Whiteside</u>
<u>Owens Illinois Onized Club</u>	<u>Streator</u>	<u>LaSalle</u>
<u>Sexton Hinsdale Landfill</u>	<u>Hinsdale</u>	<u>Cook</u>
<u>Sexton Matteson Landfill</u>	<u>Richton Park</u>	<u>Cook</u>
<u>Smith Douglas, Inc.</u>	<u>S. Streator</u>	<u>Livingston</u>
<u>South Central Terminal</u>	<u>Pana</u>	<u>Christian</u>
<u>Triem Steel & Processing</u>	<u>Chicago Heights</u>	<u>Cook</u>

REMEDIATED RELEASES GROUP

<u>Site Name</u>	<u>City</u>	<u>County</u>
<u>Taylorville Landfill</u>	<u>Taylorville</u>	<u>Christian</u>
<u>U.S. Drum</u>	<u>Chicago</u>	<u>Cook</u>
<u>Firestone Tire</u>	<u>Quincy</u>	<u>Adams</u>

(Agency Note: The placement of a site in a particular "Group" in no way represents the order in which the Agency may undertake remedial action at the site in relation to other sites on the SRAPL. Remedial action has been undertaken at sites placed in the Remediated Releases Group; however, further remedial action may be necessary at such sites.)

(Source: Amended at __ Ill. Reg. ____, effective ____.)

MN:4378g,ts

Volume 12, #1

Ill. Reg.
Jan. 4, 1988

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ILLINOIS REGISTER

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF PROPOSED AMENDMENTS

12) Initial Regulatory Flexibility Analysis:

Date rules were submitted to the Small Business Office of the Department of Commerce and Community Affairs: December 18, 1987.

Types of small businesses affected: All businesses subject to the Unemployment Insurance Act.

Reporting, bookkeeping or other procedures required for compliance: This proposed amendment sets forth the time period for recoupment of benefits not for fraud by claimant after January 1, 1984.

Types of professional skills necessary for compliance: None.

The full text of the Proposed Amendments is identical to the Emergency Amendments appearing p. 232 of this issue of the Illinois Register.

ILLINOIS REGISTER

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ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of Part: State Remedial Action Priorities List

2) Code Citation: 35 Ill. Adm. Code 860

3) Section Numbers: Proposed Action:

860.210 Amendment

4) Statutory Authority: Sections 4 and 22.2(d) of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1004 and 1022.2(d)).

5) A Complete Description of the Subjects and Issues Involved: Pursuant to 35 Ill. Adm. Code 750.440(d), the Agency is required to adopt a State priorities list which sets forth those sites at which the Agency expects to undertake remedial action. The Agency adopted such a list and called it the State Remedial Action Priorities List (SRAPL). The SRAPL became effective on July 24, 1985, and was published in 9 Ill. Reg. 12276 (August 9, 1985). The fourteen sites listed in the August publication of the SRAPL have been identified in this proposal as "Group 1".

The first update to the SRAPL became effective on February 26, 1986, and was published in 10 Ill. Reg. 4226 (March 7, 1986). The five sites added in the March publication of the SRAPL have been identified as "Group 2".

The amendments set forth in this proposal will add an additional fourteen sites to the SRAPL. These additional fourteen sites have been identified in this proposal as "Group 3".

Each time the Agency amends 35 Ill. Adm. Code 860.210 to add additional sites to the SRAPL, the Agency will establish a new "Group" to contain these additional sites. This numbering system will depict the chronological development of the SRAPL and is being proposed for this purpose only. The placement of a site in a particular "Group" in no way represents the order in which the Agency may undertake remedial action at the site in relation to other sites on the SRAPL. For example, it is possible that remedial action may be undertaken at a site listed in "Group 2" prior to undertaking remedial action at a site listed in "Group 1".

The purpose of the SRAPL is primarily to serve as an informational tool for use by the Agency in identifying sites that appear to present a significant risk to public health, welfare or the environment. The initial identification of a site on the SRAPL is intended to guide the Agency in determining which sites warrant further investigations designed to assess the nature and extent of the public health and environmental risks associated with the site and determine what State-financed remedial action, if any, may be appropriate.

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

Inclusion of a site on the SRAPL does not establish that the Agency necessarily will undertake remedial action at the site. The listing of a site on the SRAPL does not require any action of any private party, nor does it determine the liability of any party for the cost of the clean-up of the site.

- 6) Will this proposed rule replace an emergency rule currently in effect? No.
- 7) Does this rulemaking contain an automatic repeal date? No.
- 8) Does this proposed amendment contain incorporation by reference? No.
- 9) Are there any other proposed amendments pending on this part? No.
- 10) Statement of Statewide Policy Objectives: N/A
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rule may submit them in writing by no later than 45 days after publication of this notice to:

Mr. Phillip Van Ness
Illinois Environmental Protection Agency
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois 62794-9276

e. for comment

12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: December 21, 1987
- B) Types of small businesses affected. Any small business listed herein as owning or operating a facility which poses a significant environmental problem and requires remediation.
- C) Reporting, bookkeeping or other procedures required for compliance: Not applicable; as noted in item (5) above, listing of a facility herein does not require any action of any party; it serves chiefly to guide the Agency in determining which sites warrant further investigation and what State-financed remedial action, if any, is appropriate.
- D) Types of professional skills necessary for compliance: Not applicable.

The Full Text of the Proposed rule begins on the next page:

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL

CHAPTER II: ENVIRONMENTAL
PROTECTION AGENCY

PART 860 ...
STATE REMEDIAL ACTION PRIORITIES LIST

SUBPART A: GENERAL

Section	Purpose
860.100	Purpose
860.110	Application
860.120	Definitions
860.130	Publication of the State Remedial Action Priorities List

SUBPART B: LISTING OF SITES

Section	Purpose
860.200	Basis for Listing Sites on the State Remedial Action Priorities List
860.210	State Remedial Action Priorities List
860.220	Determining Priorities for Remedial Action Among Sites Listed on the State Remedial Action Priorities List

SUBPART C: DELETION OF SITES

Section	Purpose
860.300	Basis for Deleting Sites from the State Remedial Action Priorities List

AUTHORITY: Implementing and authorized by Section 4 and Section 22.2(d) of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1004 and 1022.2(d)) and 35 Ill. Adm. Code 750.440(d).

SOURCE: Adopted at 9 Ill. Reg. 12276, effective July 24, 1985; amended at 10 Ill. Reg. 4226, effective February 26, 1986; amended at 11 Ill. Reg. 12232, effective July 9, 1987; amended at ___ Ill. Reg. ___, effective ____.

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

Section 860.210 State Remedial Action Priorities List

GROUP 1

Site Name	City	County
Brockman No. 1	Ottawa	LaSalle
Koppers Co.	Carbondale	Jackson
Hopkins Chemical Co.	Atlanta	Logan
Modern Plating	Freeport	Stephenson
St. Louis Army Supply Center	Granite City	Madison
Sauget Sites	Cahokia/Sauget	St. Clair
H & L Landfill # 1	Danville	Vermilion
Sherex Chemical	Mapleton	Peoria
Carpentersville Waste Site	Carpentersville	Kane
Thomas 12th Street Landfill	Danville	Vermilion
Quincy Municipal Landfill #2 and #3	Quincy	Adams
Steagal Landfill	Galesburg	Knox

GROUP 2

Site Name	City	County
Frinks Industrial Waste	Pecatonica	Winnebago
Firestone-Tire	Quincy	Adams
Escast	Addison	DuPage
Stauffer Chemical	Chicago Heights	Cook
Moss American	Sauget	St. Clair

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

GROUP 3

Site Name	City	County
Behn Drum	Marengo	McHenry
Bennitt Landfill	Rockdale	Will
C.L. Hale Septic Cleaning	Wilmington	Will
Cargill Chemical Products	Chicago Heights	Cook
Caterpillar Tractor Company	Joliet	Will
J.J. Schultz Containers	Lemont	Cook
Lanson Chemical Division	E. St. Louis	St. Clair
Morrison City Dump	Morrison	Whiteside
Owens Illinois Onized Club	Streator	LaSalle
Sexton Hinsdale Landfill	Hinsdale	Cook
Sexton Matteson Landfill	Richton Park	Cook
Smith Douglas, Inc.	S. Streator	Livingston
South Central Terminal	Pana	Christian
Triem Steel & Processing	Chicago Heights	Cook

REMEDIED RELEASES GROUP

Site Name	City	County
Taylorville Landfill	Taylorville	Christian
U.S. Drum	Chicago	Cook
Firestone Tire	Quincy	Adams

(Agency Note: The placement of a site in a particular "Group" in no way represents the order in which the Agency may undertake remedial action at the site in relation to other sites on the SRAPL. Remedial action has been undertaken at sites placed in the Remediated Releases Group; however, further remedial action may be necessary at such sites.)

(Source: Amended at __ Ill. Reg. __, effective ____.)

MN:4378g.ts

EXHIBIT 3

SEXTON LETTER TO USEPA REGION V DATED JUNE 9, 1981



**John Sexton Sand &
Gravel Corp.**

1815 South Wolf Road
Hillside, Illinois 60162
312-449-1250

June 9, 1981

United States Environmental
Protection Agency, Region 5
Sites Notification
Chicago, Illinois 60604

Re: Notification Under Comprehensive
Environmental Response, Compensation,
and Liability Act of 1980

Dear Sirs:

John Sexton Sand & Gravel Corp. (hereinafter referred to as "Sexton") is providing this letter and the attached information pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter the "Act").

For a number of years Sexton has engaged in the operation of facilities at which certain waste materials have been deposited.

This letter should be considered as a filing by Sexton under Section 103(c) of the Act. Although Sexton is filing notification under that section of the Act, such filing is not meant to be an admission by Sexton that it has owned or operated or presently owns or operates, a "disposal facility", as that term is defined in 40 C.F.R. Part 260.10(15), or that Sexton is otherwise obligated to file any notification under the Act. Rather, Sexton submits the information herein merely to make "of record" its past and present waste management activities.

In this regard, it should be noted that a number of waste management sites operated by Sexton are identified in a report entitled "Waste Disposal Site Survey" published in 1979 by the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, House of Representatives, Ninety-Sixth Congress (hereinafter the "Eckhardt Report"). Sexton is concerned that the mere listing of one or more of its sites in the Eckhardt Report will cause the United States Environmental Protection Agency (hereinafter "USEPA") to pursue enforcement or other action under Section 103(c) of the Act in the event notification for these sites is not submitted by Sexton. Because of this, Sexton is providing information on

United States Environmental
Protection Agency
June 9, 1981
Page 2

its sites, including those listed in the Eckhardt Report, even where hazardous waste disposal activities never took place at the respective site.

Sexton has noted that the Form published by the USEPA at 46 Federal Register 22144 (April 15, 1981) is optional. And because that form is not applicable to numerous of Sexton's past and present operations, Sexton has chosen to submit notification which provides the following information:

Person Required to Notify
Site Location
Person to Contact
Relationship of site to Person Required to Notify
Listed in Eckhardt Report
Dates of Waste Handling
Waste Type
 1. General Type of Waste
 2. Source of Waste
Facility Type
Total Facility Waste Amount
Total Facility Area
Known, Suspected or Likely Releases to the Environment

Finally, because items H and I of the Form published at 46 Federal Register 22144 (April 15, 1981) are optional, Sexton has not included that information in the notification.

Sincerely,



Arthur A. Daniels
Executive Vice President
John Sexton Sand & Gravel Corp.

AAD:ms

NOTIFICATION

A. Person Required to Notify: John Sexton Sand & Gravel Corp.
1815 South Wolf Road
Hillside, Illinois 60162

B. Site Location: Hinsdale/Sexton
11700 West 31st Street
Hinsdale
Cook County, Illinois 60521

C. Person to Contact: Arthur A. Daniels
John Sexton Sand & Gravel Corp.
1815 South Wolf Road
Hillside, Illinois 60162
(312)499-1250

Relationship of Site to
Person Required to
Notify: Operator

Listed in Eckhardt Report: Yes, pages 96 and 107

D. Dates of Waste Handling: 1959 until Present

E. Waste Type:

1. General Type of Waste: Mixed municipal, commercial,
industrial, construction
debris

2. Source of Waste: Construction, residential,
commercial, sanitary/refuse

F. Facility Type: Sanitary landfill

Total Facility Waste
Amount: 16,000,000 cubic yard

Total Facility Area: 275 acres

G. Known, Suspected or
Likely Releases to the
Environment: None

EXHIBIT 4

IEPA LETTER TO MR. RAY ALBRECHT OF WESTERN ELECTRIC CO.

DATED OCTOBER 20, 1980

Illinois Environmental Protection Agency



1701 S. 1st St.
Maywood, Ill. 60

312/3459780

Refer to: Cook County - 03145201 - Hinsdale/Sexton

October 20, 1980

Western Electric Company
22nd and Cicero
Cicero, Illinois 60623

Mr. Ray Albrecht,

On September 9, 1980, Western Electric Company and Kucera Disposal Company were involved in an incident in which a load of refuse from your Foundry Division caught fire on route to be landfilled. This hot load produced fumes that sent two police officers to the hospital for treatment of eye and skin irritation. The load was taken to Hinsdale/Sexton landfill, was unloaded and temporarily covered.

Information from your office and Kucera Disposal indicates that approximately 200-400lbs. of Calcium Oxide contained in lined cardboard boxes were deposited into a roll-off box used for the disposal of general refuse only. Rain that morning, is likely to have caused the Calcium Oxide to react and produce enough heat to start the roll-off box on fire. The Calcium Oxide (a special waste) should not have been deposited in a receptacle used for general refuse, but put into a separate receptacle for special waste. This Agency therefore requests that Western Electric Company take appropriate measures to inform it's employees on the proper handling and disposal techniques for Special Waste, to insure that a potentially dangerous incident such as this does not threaten the health and safety of your employees, or the general public in the future.

Your cooperation and concern in this matter is certainly appreciated, if this Agency can be of any assistance please feel free to contact us.

Sincerely,

Kenneth P. Bechely, Northern Region Manager
Field Operations Section
Division of Land/Noise Pollution Control

BPB/bpb

cc: Division File
Northern Region ✓

EXHIBIT 5

IEPA LETTER TO JOHN SEXTON SAND & GRAVEL CORP.

DATED OCTOBER 9, 1980

Illinois Environmental Protection Agency

71.1



1701 S. 1st St.
Maywood, Ill. 601

312/345-9780
1701 S. First Ave. - 6th Fl.
Maywood, IL 60153

Reference # 5

Refer to: Cook County - 03145201 - Hinsdale/Sexton

October 9, 1980

John Sexton Sand & Gravel Corp.
1815 South Wolf Road
Hillside, IL 60162

Dear Sir:

Your solid waste disposal facility was visited on September 11, 1980 in response to the emergency deposition of a hot load, which contained unknown chemicals.

Three samples were collected on the above date and the analysis forwarded to you. We have found the material deposited at your site to be non-hazardous. You are urged to apply for a supplemental permit to accept the subject load at your site or notify Western Electric and/or Kucera Disposal Co. of the need for its removal.

Your cooperation in this matter is certainly appreciated. If this Agency can be of further assistance, please feel free to contact us.

Sincerely,

Kenneth P. Bechely, Northern Region Manager
Field Operations Section
Division of Land/Noise Pollution Control

DMS/dms

cc: Division File
Northern Region ✓

EXHIBIT 6

THREE IEPA SPECIAL ANALYSIS FORMS DATED SEPTEMBER 10

Time Collected: 1:30 pm

Lab # 01315 SEP10

Date Collected: 9/9/80

SPECIAL ANALYSIS FORM

Date Received _____

X 201 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF LAND/NOISE POLLUTION CONTROL

COUNTY: Cook FILE HEADING: HINSDALE/Kucera FILE NUMBER: Emergency Response

SOURCE OF SAMPLE: (Exact Location)

HINSDALE/Sexton Landfill

PHYSICAL OBSERVATIONS, REMARKS:

White powder

TESTS REQUESTED:

48 Leach

COLLECTED BY: Brad Benning

TRANSPORTED BY: Environmental Protection Agency

LABORATORY Division of Laboratory Services

3131 W. Taylor Street

Chicago, Illinois 60612

RECEIVED BY: R. Modi DATE 9-30 AM

COMPLETED:

FORWARDED: 10-3-80

Ca-862

Pb <0.03

Daugherty

Mg-0.0

Hg <0.05

Fe-0.0

Mn-0.02

As <0.001

Cl-5

BA-0.4

RECEIVED

Cd-0.00

Cr-0.06

Cu-0.01

ILL. E.P.A. - D.L.P.C.
STATE OF ILLINOIS

Hw

Time Collected: 1:30 pm

Lab #

01316 SEP10

Date Collected: 9/9/90

SPECIAL ANALYSIS FORM

Date Received _____

X 202
COUNTY: Cook FILE HEADING: HINSDALE/Kuccia FILE NUMBER: Emergency Response

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF LAND/NOISE POLLUTION CONTROL

SOURCE OF SAMPLE: (Exact Location)

HINSDALE/Sexton Landfill

PHYSICAL OBSERVATIONS, REMARKS:

Black powder

TESTS REQUESTED:

48 hr Leach

COLLECTED BY: B. J. Benning

TRANSPORTED BY: Donald Benning

LABORATORY Division of Laboratory Services

3121 W. Taylor Street

RECEIVED BY: R. Modi DATE 9-30 AM COMPLETED:

Chicago, Ill 8061246 FORWARDED: 10-3-80

Ca - 683

Pb - < 0.03

Daugherty

Mg - 0.0

Hg - < 0.05

Fe - 0.0

Mn - 0.01

As - 0.002

Cl - 23

BA - 0.1

Cd - 0.00

Cr - 0.01

Cu - 0.03

RECEIVED

10-3-80

ILL. E.P.A. - D.L.P.C.
STATE OF ILLINOIS

Time Collected: 1³⁰ pm

Lab # 01317 SEP10

Date Collected: 9/9/80

SPECIAL ANALYSIS FORM

Date Received _____

X203
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF LAND/NOISE POLLUTION CONTROL
COUNTY: Cook FILE READING: HINSDALE/Kuccia FILE NUMBER: Emergency Response

SOURCE OF SAMPLE: (Exact Location)
Hinsdale/Santa Landfill

PHYSICAL OBSERVATIONS, REMARKS:
White material

TESTS REQUESTED: 48 hr. Leach

COLLECTED BY: Brad Benning TRANSFERRED BY: Environmental Protection Agency
LABORATORY 2121 W. Taylor Street Chicago, Illinois 60612

RECEIVED BY: R. Modi DATE 9-30 AM COMPLETED: DATE FORWARDED: 10-3-80

Ca - 66.5 Ph - <0.03

Mg - 0.0 Hg - <0.05

Fe - 0.0 Mn - 0.00

As - 0.004 Cl - 9

BA - 0.0

Cd - 0.00

Cr - 0.00

Cu - 0.02

RECEIVED

ILL. E.P.A. - D.L.P.C.
STATE OF ILLINOIS

EXHIBIT 7

WALTER H. FLOOD & CO., INC.,

SOIL INVESTIGATION NO. 7205-0010

WALTER H. FLOOD & CO., INC.
ENGINEERS
CHICAGO, ILLINOIS
PORTAGE (KALAMAZOO), MICHIGAN

WALTER H FLOOD & CO. INC.

Consistent with the 1911-1912
List of the 1st and 2nd
List of the 1st and 2nd
List of the 1st and 2nd

Prepared by

Walter H Flood & Co. Inc.



WALTER H. FLOOD & CO., INC.

ENGINEERS

6102 SO. BLACKSTONE AVE.
CHICAGO 60637

CHICAGO, ILL. 1972

MEMBERS
AMERICAN SOCIETY OF MECHANICAL ENGINEERS
AMERICAN SOCIETY OF CIVIL ENGINEERS
AMERICAN SOCIETY OF ELECTRICAL ENGINEERS
AMERICAN SOCIETY OF MECHANICAL ENGINEERS
AMERICAN SOCIETY OF MECHANICAL ENGINEERS
AMERICAN SOCIETY OF MECHANICAL ENGINEERS
AMERICAN SOCIETY OF MECHANICAL ENGINEERS
AMERICAN SOCIETY OF MECHANICAL ENGINEERS
AMERICAN SOCIETY OF MECHANICAL ENGINEERS

CHICAGO OFFICE
6102 S. BLACKSTONE AVE.
CHICAGO, ILL. 60637
312-551-1111

INSPECTION AND TESTING OF
MATERIALS AND CONSTRUCTION
SPECIFICATIONS AND REPORTS
PHYSICAL AND CHEMICAL TESTS
RESEARCH AND INVESTIGATION
CONCRETE CORE TESTING
FOUNDATION INVESTIGATION
PAVEMENT INVESTIGATION
SOIL MECHANICS INVESTIGATION
REFERENCE LABORATORY

Dear Sirs: We have the honor to acknowledge the receipt of your letter of the 10th day of June, 1972, regarding the above captioned project.

Attention: Mr. J. H. Flood

Re: 1011 - Extension No. 100-0010
1011 - Extension No. 100-0010
1011 - Extension No. 100-0010
1011 - Extension No. 100-0010

Gentlemen:

We have the honor to acknowledge the receipt of your letter of the 10th day of June, 1972, regarding the above captioned project.

We have the honor to acknowledge the receipt of your letter of the 10th day of June, 1972, regarding the above captioned project.

We have the honor to acknowledge the receipt of your letter of the 10th day of June, 1972, regarding the above captioned project.

We have the honor to acknowledge the receipt of your letter of the 10th day of June, 1972, regarding the above captioned project.

We have the honor to acknowledge the receipt of your letter of the 10th day of June, 1972, regarding the above captioned project.

Raymond J. Flood

This report has been prepared in accordance with generally accepted soil and foundation engineering practices, and represents the results of the subsoil investigation for the proposed extension of the Solid Waste Disposal Site on 31st Street west of Wolf Road in Cook County (near Westchester), Illinois.

3.2. Soil type, soil conditions and groundwater levels

[illegible]

II. Site Geology, Soil Conditions and Characteristics (Continued)

but as the bedrock surface elevation decreases to the north, the clay tills are underlain by various layers of glacio-fluvial silts, sands and gravel-boulder drift. At the maximum depth borings of 50 feet an un-identifiable glacial drift layer was noted in the borings at depths of 37 to 43 feet. This older drift is a silt-sand-gravel mixture and is considered moderately impermeable. The bedrock is the Silurian Niagara dolomite, generally thinly bedded, argillaceous and fractured.

III. Hydrogeology

The surface drainage of the project site is northward and eastward to tributaries to Salt Creek. The partially excavated area of borings 11, 12 and 13 and the existing excavation to the north temporarily disrupt the surface drainage and part of the surface runoff is into these temporary excavations.

The ground-water flow in the glacial soils likely will eventually assume a flow coincident with the surface topography pattern, which is easterly. The ground-water data from project site, which is limited in area, indicated a general ground-water flow toward the north towards the presently deeper excavations in the land fill.

Ground-water flow in the bedrock aquifer is southerly towards Salt Creek.

IV. Recommendations for Landfill Extension

Excavations for the landfill extension should be limited to the upper Finley tills to reduce the potential for ground-water pollution and to avoid the problems of ground water likely to be encountered in the more pervious water bearing underlying glacio-fluvial soils. This will result in a decreasing excavation depth as the present excavation is continued southerly. A minimum of 1 foot of the impermeable clay should be left in place between the base of the fill to be placed and the underlying soil or rock. With respect to the partially excavated area west of the entrance road, the south part has been apparently excavated through the clay tills, and this area should be sealed with an impervious lined clay well compacted. A minimum thickness of 1 foot is recommended for the liner.

V. Groundwater Pollution and Water Pollution

The ground-water pollution problem will not arise after the completion of the landfill extension. The ground-water pollution problem will arise if the landfill extension is not sealed with an impervious lined clay well compacted. A minimum thickness of 1 foot is recommended for the liner.

Drainage Changes During and After Filling (Continued)

Ground-water flow in the deeper soils on the north part of the site are also expected to be virtually unaffected by the proposed site extension. This deeper flow in the buried bedrock valley is likely in the direction of the slope of the valley floor, which is northeasterly.

The ground-water flow in the upper fill materials will be dependent upon the final grading and the slope of the refuse cover of the landfill. The final grading plan will be sloped west to east to approach the original natural topography as much as possible. The fills in the landfill normally are alternate layers of low permeability materials (the refuse) and layers of high permeability (clay or silt). The flow of the ground water will normally then be in the direction of the slope of the more permeable cover materials. Since the proposed extension of the fill is to commence near the existing pit, it is likely that this upper flow of ground water in the fill will be directed toward the deeper fill areas presently being placed.

VI. Ground-Water Readings

Ground-water readings were taken in the test borings. The test borings were taken by a dry method hollow stem auger and observations made of seepage into the bore holes while drilling. When bedrock was encountered, no sudden surge or influx of ground water was noted. After a ring of borings was completed, the auger was left in place and at least 1 water level measurement taken in order to determine the piezometric level of ground water in the bedrock. Finally, 12 hours after completion of the test borings, another reading was taken.

It is pointed out that our interpretations of the ground water levels on the site have been made based upon these water level readings. It must be noted that fluctuations in the level of the ground water may be due to variations in rainfall, temperature, soil permeability, and other factors. It is noted at the time of the water level readings that the ground-water level was slightly above the level of the bedrock. It is noted that the ground-water level was slightly above the level of the bedrock. It is noted that the ground-water level was slightly above the level of the bedrock. It is noted that the ground-water level was slightly above the level of the bedrock.

Summary and ConclusionsSummary of Findings

The findings of this investigation are as follows: (1) The ground water level is slightly above the level of the bedrock. (2) The ground water level is slightly above the level of the bedrock. (3) The ground water level is slightly above the level of the bedrock.

Conditions of the Investigation Continued:

A. Changes in Conditions continued

drawings. This report does not reflect any soil variations which may occur between the borings. Since the nature and extent of soil variations between the borings may not become evident until construction, it may be necessary to re-evaluate the recommendations of this report after performing on-site observations during the excavation period of construction. It is recommended that we be retained to perform continuous construction review during the excavation, backfill, and foundation phases of the project. We can assume no responsibility for the construction compliance with the recommendations unless we have been retained to perform this on-site review during construction.

3. 5011 Berlin 1945

The soil boring logs have been prepared from the field and laboratory data. The soil descriptions have been made by visual classification by qualified soils personnel. Consistency classifications are based upon the laboratory test or field penetration test data. The stratification lines may represent approximate boundaries between soil types as the change may be transitional. For instance, coloring changes in the upper soils are often due to weathering, and are usually transitional rather than abrupt. Natural topsoil stratification is almost always transitional. Soil stratification by consistency may be abrupt in the case of stratification of soils of differing origin, but may be transitional in soils of the same origin.

2. Laboratory Cell Tests

Laboratory tests performed on samples of the soils consisted of calibrated penetrometer tests and natural water content (ASTM D153-60). The results of these tests are entered in the following table.

[illegible]

Soil Investigation continued

Field Investigation continued

During drilling, immediately after completion of drilling, and 1. hours after completion of drilling, readings of the ground water were taken in the bore holes and the readings recorded on the boring logs.

Relative ground surface elevations were taken of the bore holes with a reference elevation of mean sea level from the Ordnance Department datum. Test borings were located to give an accuracy of plus or minus 5 feet from the dimensioned location.

EXHIBIT 8

ALTERNATIVE RECALCULATIONS OF HRS GROUND WATER ROUTE WORK SHEET

EXHIBIT 8-1

(see discussion at text, p. 20; 22-23)
 Correct "Physical State" and "Containment" scores;
 all other USEPA assumptions unchanged

Ground Water Route Work Sheet						
Rating Factor	Assigned Value (Circle One)	Multi- plier	Score	Max. Score	Ref. (Section)	
1 Observed Release	0 45	1	0	45	3.1	
If observed release is given a score of 45, proceed to line 4 . If observed release is given a score of 0, proceed to line 2 .						
2 Route Characteristics					3.2	
Depth to Aquifer of Concern	0 1 2 3	2	6	6		
Net Precipitation	0 1 2 3	1	1	3		
Permeability of the Unsaturated Zone	0 1 2 3	1	1	3		
Physical State	0 1 2 3	1	1	3		
Total Route Characteristics Score			9	15		
3 Containment	0 1 2 3	1	1	3	3.3	
4 Waste Characteristics					3.4	
Toxicity/Persistence	0 3 6 9 12 15 18	1	18	18		
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1	1	8		
Total Waste Characteristics Score			19	26		
5 Targets					3.5	
Ground Water Use	0 1 2 3	3	9	9		
Distance to Nearest Well/Population Served	0 4 6 8 10 12 16 18 20 24 30 32 35 40	1	40	40		
Total Targets Score			49	49		
6 If line 1 is 45, multiply 1 x 4 x 5 If line 1 is 0, multiply 2 x 3 x 4 x 5			8379	57,330		
7 Divide line 6 by 57,330 and multiply by 100			$S_{gw} = 14.62$			

FIGURE 2
GROUND WATER ROUTE WORK SHEET

EXHIBIT 8-1 (continued)

	s	s ²
Groundwater Route Score (S _{gw})	14.62	213.74
Surface Water Route Score (S _{sw})	0.00	0.00
Air Route Score (S _a)	0.00	0.00
$S_{gw}^2 + S_{sw}^2 + S_a^2$		213.74
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2}$		14.62
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2} / 1.73 = S_M =$		8.45

FIGURE 10
WORKSHEET FOR COMPUTING S_M

EXHIBIT 8-2

(see discussion at text, pp. 19-21)
 Correct "Route Characteristics" and "Waste Characteristics"
 scores; all other USEPA assumptions unchanged

Ground Water Route Work Sheet						
Rating Factor	Assigned Value (Circle One)	Multi- plier	Score	Max. Score	Ref. (Section)	
1 Observed Release	0 45	1	0	45	3.1	
If observed release is given a score of 45, proceed to line 4 . If observed release is given a score of 0, proceed to line 2 .						
2 Route Characteristics					3.2	
Depth to Aquifer of Concern	0 1 2 3	2	0	6		
Net Precipitation	0 1 2 3	1	1	3		
Permeability of the Unsaturated Zone	0 1 2 3	1	1	3		
Physical State	0 1 2 3	1	1	3		
Total Route Characteristics Score			3	15		
3 Containment	0 1 2 3	1	3	3	3.3	
4 Waste Characteristics					3.4	
Toxicity/Persistence	0 3 6 9 12 15 18	1	0	18		
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1	0	8		
Total Waste Characteristics Score			0	26		
5 Targets					3.5	
Ground Water Use	0 1 2 3	3	9	9		
Distance to Nearest Well/Population Served	0 4 6 8 10 12 16 18 20 24 30 32 35 40	1	40	40		
Total Targets Score			49	49		
6 If line 1 is 45, multiply 1 x 4 x 5 If line 1 is 0, multiply 2 x 3 x 4 x 5			0	57,330		
7 Divide line 6 by 57,330 and multiply by 100			$S_{gw} = 0$			

FIGURE 2
GROUND WATER ROUTE WORK SHEET

EXHIBIT 8-2 (continued)

	s	s ²
Groundwater Route Score (S _{gw})	0	0
Surface Water Route Score (S _{sw})	0	0
Air Route Score (S _a)	0	0
$S_{gw}^2 + S_{sw}^2 + S_a^2$		0
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2}$		0
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2} / 1.73 = S_M =$		0

FIGURE 10
WORKSHEET FOR COMPUTING S_M

EXHIBIT 8-3

(see discussion at text, pp. 23-29)

Correct "Targets" scores; all other USEPA assumptions unchanged

Ground Water Route Work Sheet						
Rating Factor	Assigned Value (Circle One)	Multi-plier	Score	Max. Score	Ref. (Section)	
1 Observed Release	0 45	1	0	45	3.1	
If observed release is given a score of 45, proceed to line 4 . If observed release is given a score of 0, proceed to line 2 .						
2 Route Characteristics					3.2	
Depth to Aquifer of Concern	0 1 2 3	2	6	6		
Net Precipitation	0 1 2 3	1	1	3		
Permeability of the Unsaturated Zone	0 1 2 3	1	1	3		
Physical State	0 1 2 3	1	2	3		
Total Route Characteristics Score			10	15		
3 Containment	0 1 2 3	1	3	3	3.3	
4 Waste Characteristics					3.4	
Toxicity/Persistence	0 3 6 9 12 15 18	1	18	18		
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1	1	8		
Total Waste Characteristics Score			19	26		
5 Targets					3.5	
Ground Water Use *	0 1 2 3	3	6	9		
Distance to Nearest Well/Population Served **	0 4 6 8 10 12 16 18 20 24 30 32 35 40	1	10	40		
Total Targets Score			16	49		
6 If line 1 is 45, multiply 1 x 4 x 5 If line 1 is 0, multiply 2 x 3 x 4 x 5			9120	57,330		
7 Divide line 6 by 57,330 and multiply by 100			S _{gw} = 15.91			

FIGURE 2
GROUND WATER ROUTE WORK SHEET

* "Ground Water Use" score should be 2, indicating "drinking water with municipal water from alternate unthreatened source available." Water is available from Westchester. See discussion at text, pp. 41-42.

** "Distance to Nearest Well/Population Served" score should be 10. -Nearest wells are 20 residential wells in Hickory Lane subdivision. Population served is 20 x 3.8 = 76. See HRS Guidance at 800.

	s	s ²
Groundwater Route Score (S _{gw})	15.91	253.13
Surface Water Route Score (S _{sw})	0.00	0.00
Air Route Score (S _a)	0.00	0.00
$S_{gw}^2 + S_{sw}^2 + S_a^2$		253.13
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2}$		15.91
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2} / 1.73 = S_M =$		9.20

FIGURE 10
WORKSHEET FOR COMPUTING S_M

EXHIBIT 8-4

(see discussion at text, pp. 20-29)

Correct "Route Characteristics," "Containment," "Waste Characteristics,"
and "Targets" scores

Ground Water Route Work Sheet						
Rating Factor	Assigned Value (Circle One)	Multi-plier	Score	Max. Score	Ref. (Section)	
[1] Observed Release	(0) 45	1	0	45	3.1	
If observed release is given a score of 45, proceed to line [4] . If observed release is given a score of 0, proceed to line [2] .						
[2] Route Characteristics					3.2	
Depth to Aquifer of Concern	(0) 1 2 3	2	0	6		
Net Precipitation	0 (1) 2 3	1	1	3		
Permeability of the Unsaturated Zone	0 (1) 2 3	1	1	3		
Physical State	0 (1) 2 3	1	1	3		
Total Route Characteristics Score			3	15		
[3] Containment	0 (1) 2 3	1	1	3	3.3	
[4] Waste Characteristics					3.4	
Toxicity/Persistence	(0) 3 6 9 12 15 18	1	0	18		
Hazardous Waste Quantity	(0) 1 2 3 4 5 6 7 8	1	0	8		
Total Waste Characteristics Score			0	26		
[5] Targets					3.5	
Ground Water Use *	0 1 (2) 3	3	6	9		
Distance to Nearest Well/Population Served **	0 4 (8) 10 12 16 18 20 24 30 32 35 40	1	10	40		
Total Targets Score			16	49		
[6] If line [1] is 45, multiply [1] x [4] x [5] If line [1] is 0, multiply [2] x [3] x [4] x [5]			0	57,330		
[7] Divide line [6] by 57,330 and multiply by 100	$S_{gw} = 0$					

FIGURE 2
GROUND WATER ROUTE WORK SHEET

* "Ground Water Use" score should be 2, indicstating "drinking water with municipal water from alternate unthreatened source available." Water is available from Westchester. See discussion at text, pp. 41-42.

** "Distance to Nearest Well/Population Served" score should be 10. Nearest wells are 20 residential wells in Hickory Lane subdivision. Population served is $20 \times 3.8 = 76$. See HRS Guidance at 800.

	s	s ²
Groundwater Route Score (S _{gw})	0	0
Surface Water Route Score (S _{sw})	0	0
Air Route Score (S _a)	0	0
$S_{gw}^2 + S_{sw}^2 + S_a^2$		0
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2}$		0
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2} / 1.73 = S_M =$		0

FIGURE 10
WORKSHEET FOR COMPUTING S_M

EXHIBIT 9

IEPA MEMORANDUM TO MONTE NIENKIRK

DATED DECEMBER 17, 1987



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

MEMORANDUM

DATE: December 17, 1987
TO: Monte Neinkerk
FROM: IEPA, Northern Region
SUBJECT: Review of Groundwater Monitoring Program at the Sexton/Hinsdale Landfill
Technical/General Correspondence
Cook County/Hinsdale - Sexton
0314520001

Site Review

The Hinsdale - Sexton Municipal landfill (over 300 acres) is adjacent to the 294 Tri-State Tollway just north of Hinsdale, Illinois. Forty to eighty feet of Municipal and Commercial waste was deposited at the site. The site received waste from 1958 to 1985 when final cover, MSD sludge, and final vegetative cover was applied.

The present groundwater monitoring program consists of four wells. Three of which are perennially dry. The one water yielding well is screened in out wash sands and gravels upgradient of the landfill. Thus no down gradient wells exist, no accurate data on groundwater flow direction or groundwater quality is available for the site.

Concerns

The private well sampling program was recently used to evaluate the safety of groundwater for drinking in the area southeast of the site. This was done in conjunction with U.S.E.P.A. Although the results of this sampling are preliminary and could be due to lab contaminants, low parts per billion Methylene Chloride and Phthalates have been detected in private supplies. Groundwater is used extensively in the area for private, commercial and municipal use. The lack of a groundwater monitoring program and a potential release was reason for score the site. The scoring qualifies the site for the SRAPL even though it was assumed there was as yet no observed release.

The site began operations during a period of minimal regulatory oversight in an area which was thought to be a small sand and gravel quarry as well as a rock quarry. Thus waste could have been placed in an area which could directly impact groundwater. The site Geology consists of shallow silurian bedrock near the surface in the southern part of the site and dipping to the north, to form an area of pre-glacial drainage referred to as a bedrock valley. This silurian unit ranges from 50 to 150 feet thick at the site. Overlying the silurian unit in the bedrock valley is system of outwash units commonly called valley train material. This is very coarse sand and gravel unit with silts and clays discontinuously deposited in what could be meander deposits.

Cook County/Hinsdale - Sexton
0314520001
Page 2

Overlying the valley train material is a complex system of Wedron Till materials, lake bed silts and additional out wash sand units. These out wash units and the Bedrock are major sources of drinking water in Northeastern Illinois.

The data submitted by Eldredge engineering indicates that regionally, groundwater is moving to the south and east. This doesn't consider the site specific geology. The Agency's opinion is that the out wash units groundwater is flowing to the north and northwest toward the axis of the Bedrock Valley and that the bedrock aquifer flows to the north and east. In any case there is a total lack of monitoring information at the site.

Recommendations

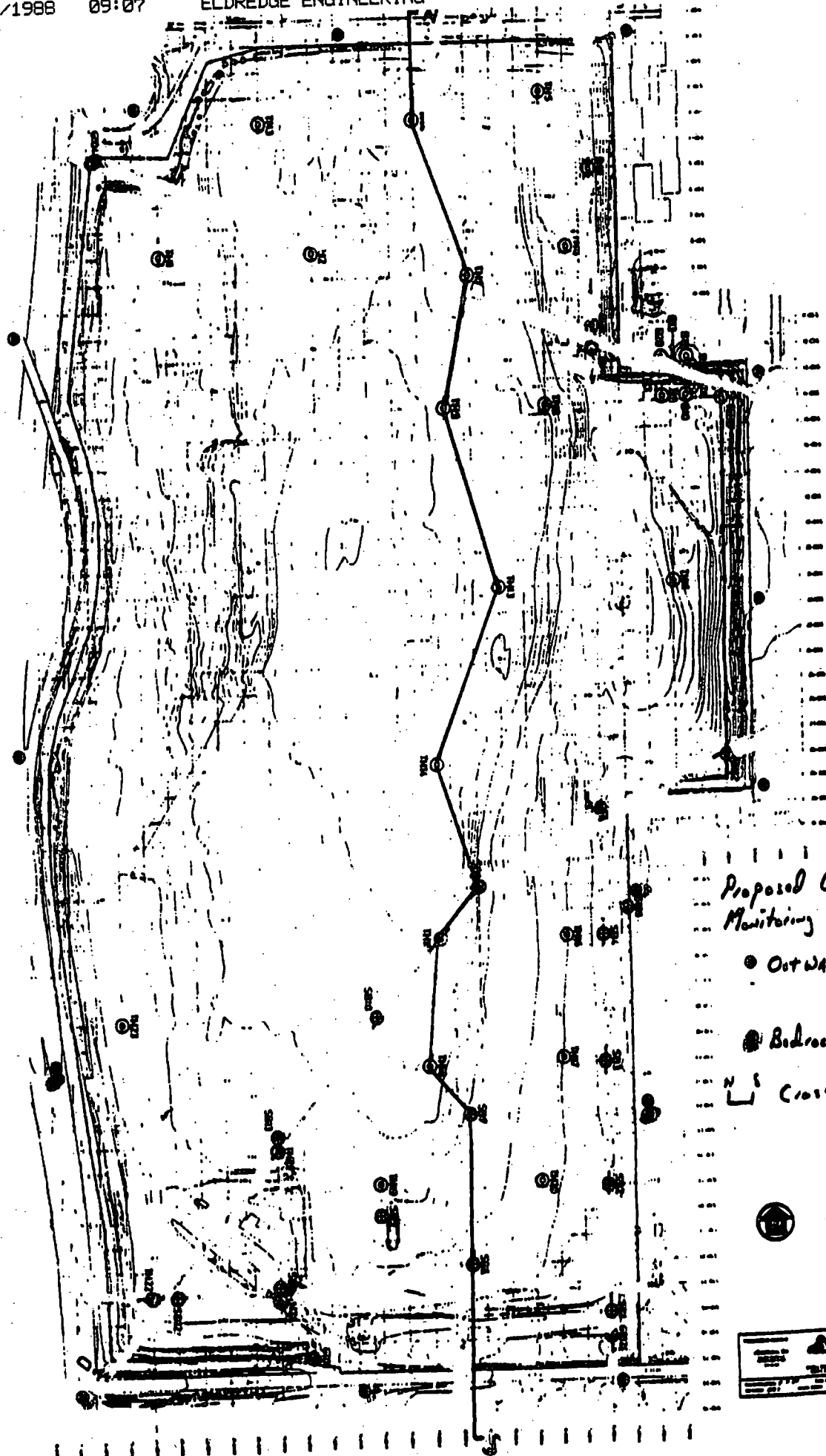
It is the Agency's position that an upgraded groundwater monitoring program should be implemented. This program should include a series of cluster wells completed in the bedrock and the shallow outwash units. The hydrology of the area indicated that groundwater migrates through these units very rapidly. Thus a tight well spacing is necessary in the down gradient directions. Also in the old fill area, which was more likely to have accepted hazardous waste and less likely to have been properly engineered, a tight well spacing will be necessary.

TE:bj:06J

cc: Cliff Gould
Northern Region File
Division File

Attached

1964 - Water level after drilling map
1972 - Water level after drilling map
North-South Geologic Cross-Section
Proposal for upgrade of Groundwater Monitoring Plan
Strip log all borings on-site.



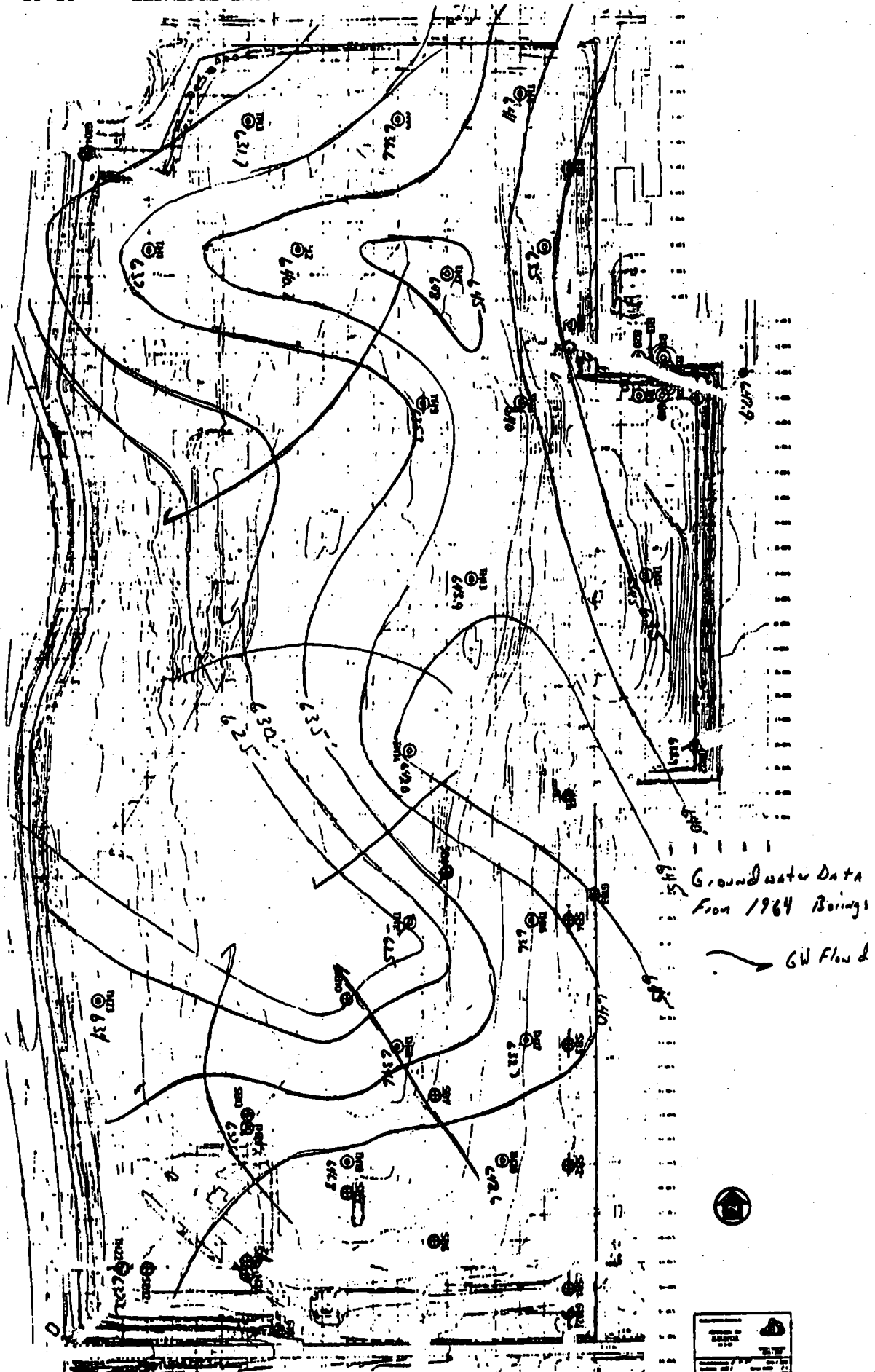
Proposed Groundwater
Monitoring Program

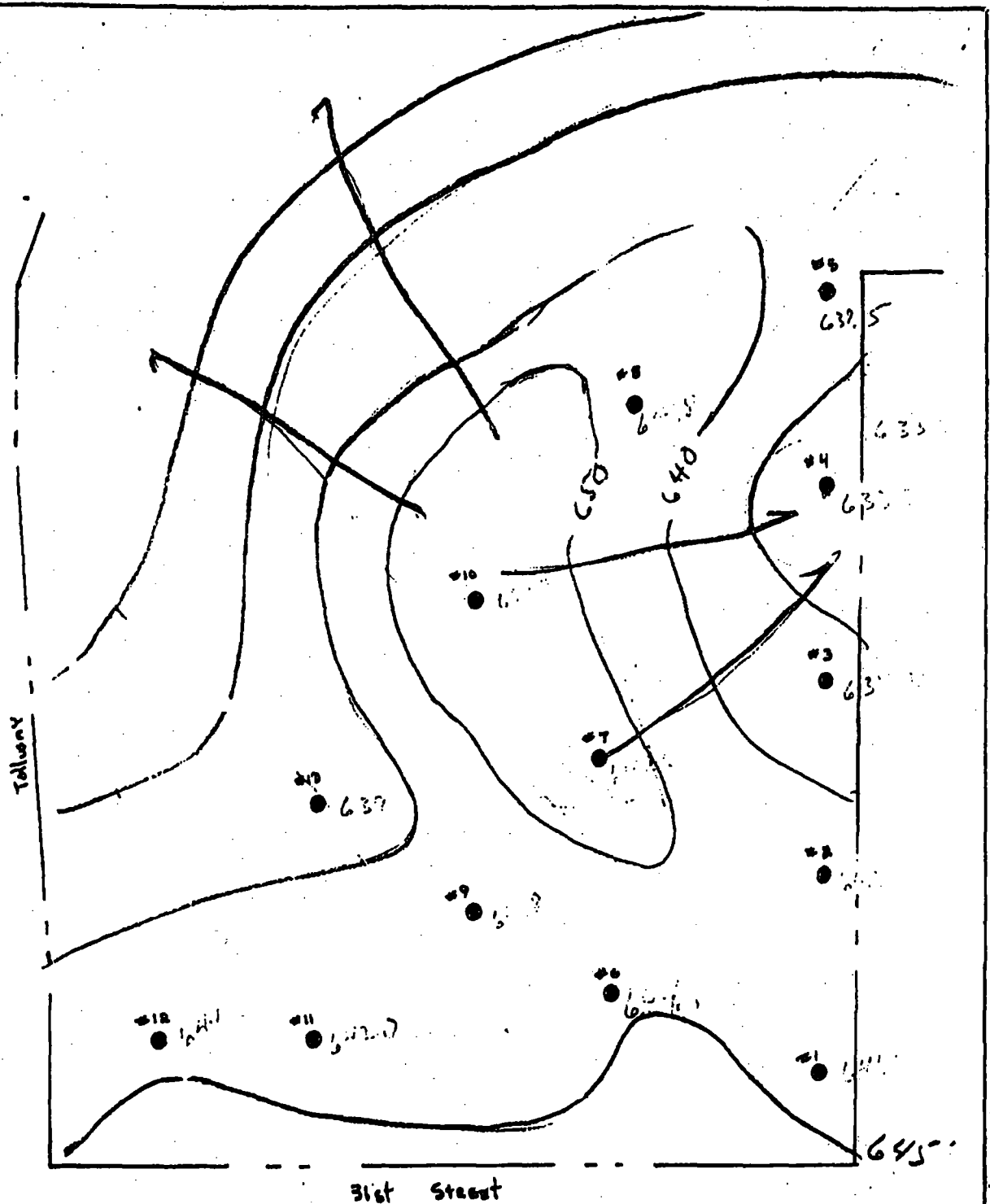
• Outwash Well

● Bedrock Well

N S Cross-section







NOTE: ● BORING LOCATIONS ARE LOCATED ON A 100 FT GRID SYSTEM WITH N/S BASELINE AT NORTH PROPERTY LINE & E/W BASELINE AT EAST 2

#1 6W/305	#7 11.65W/425
#2 6W/455	#8 11W/535
#3 6W/405	#9 15W/465
#4 6W/355	#10 15W/305
#5 6W/305	#11 19W/495
#6 11.5W/405	#12 20W/495
	#13 19W/435



Estimate of G.W.
Flow map - 1972

SOIL BORING LOCATIONS
JOHN SEYTON SAND & GRAVEL
OAKBROOK ILLINOIS

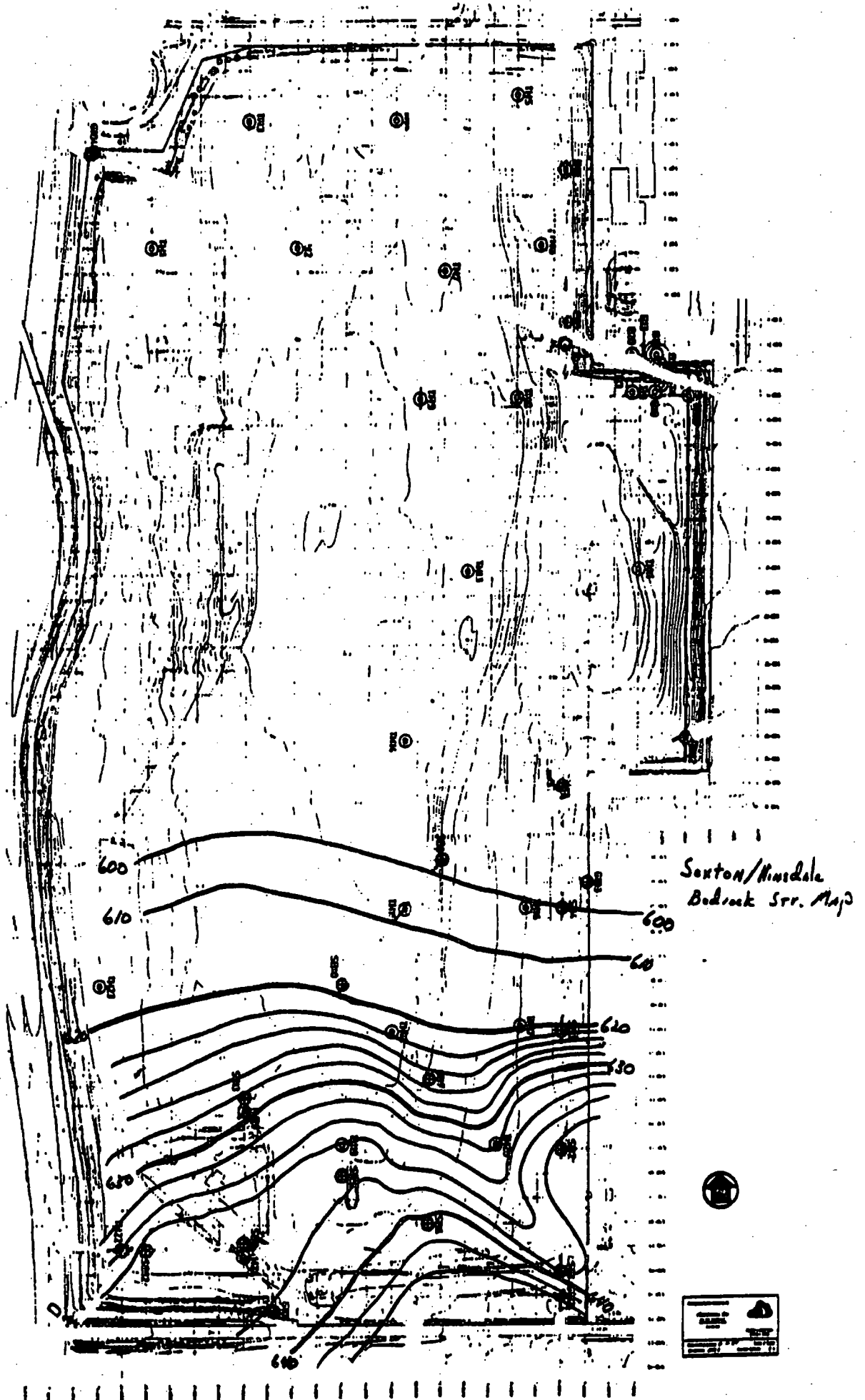
WALTER H. FLOOD & CO. INC.

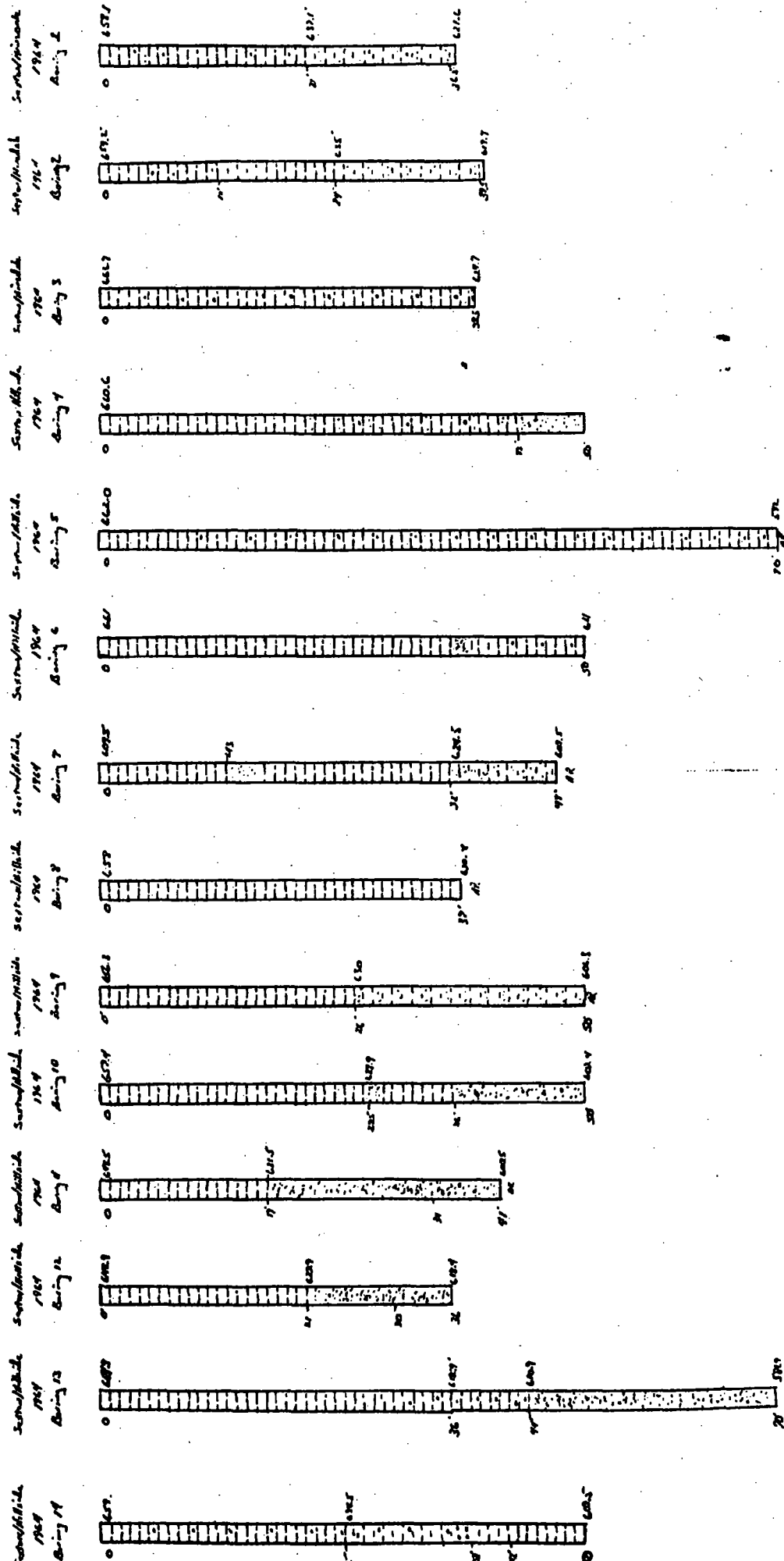
SCALE 1" = 100'

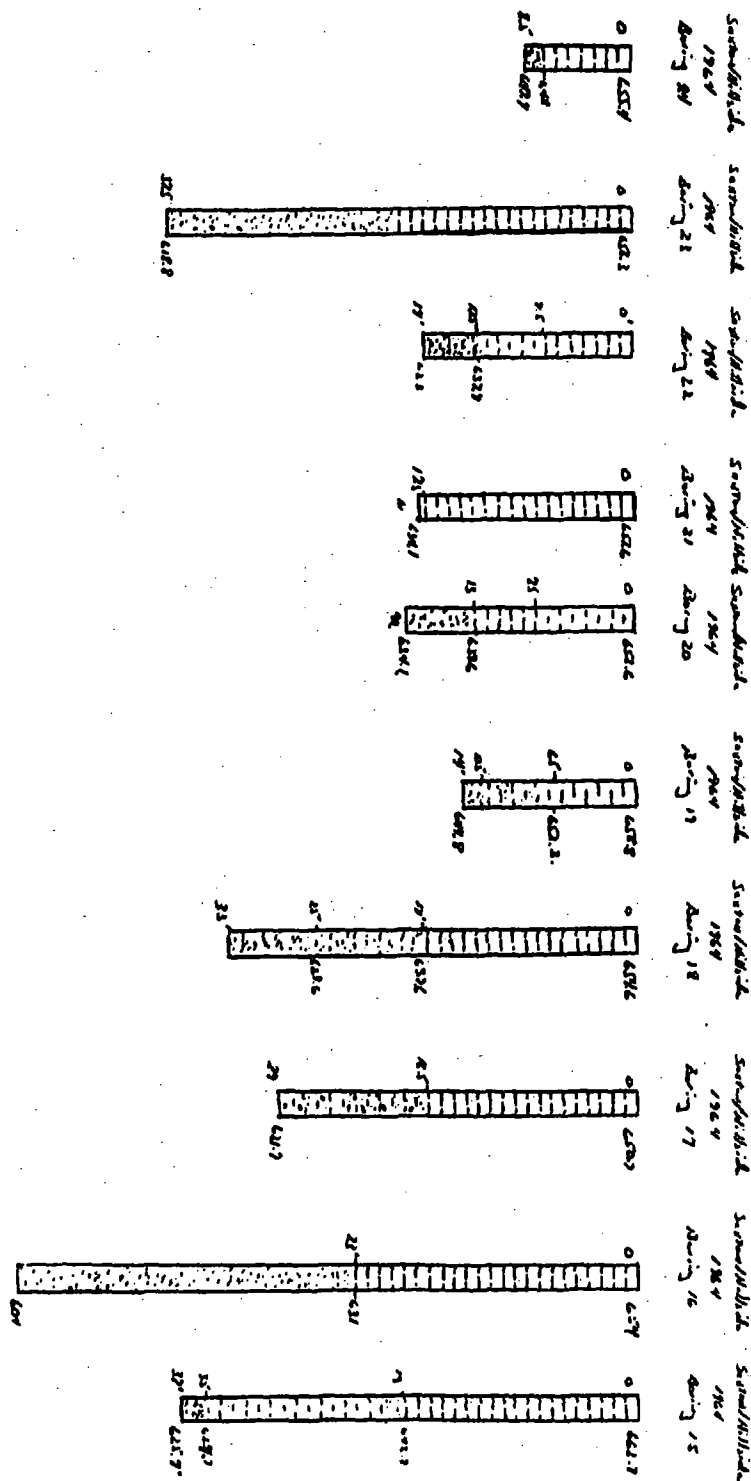
BY RSW

JOB / LAD NO. 7205010

DATE 7/19/72







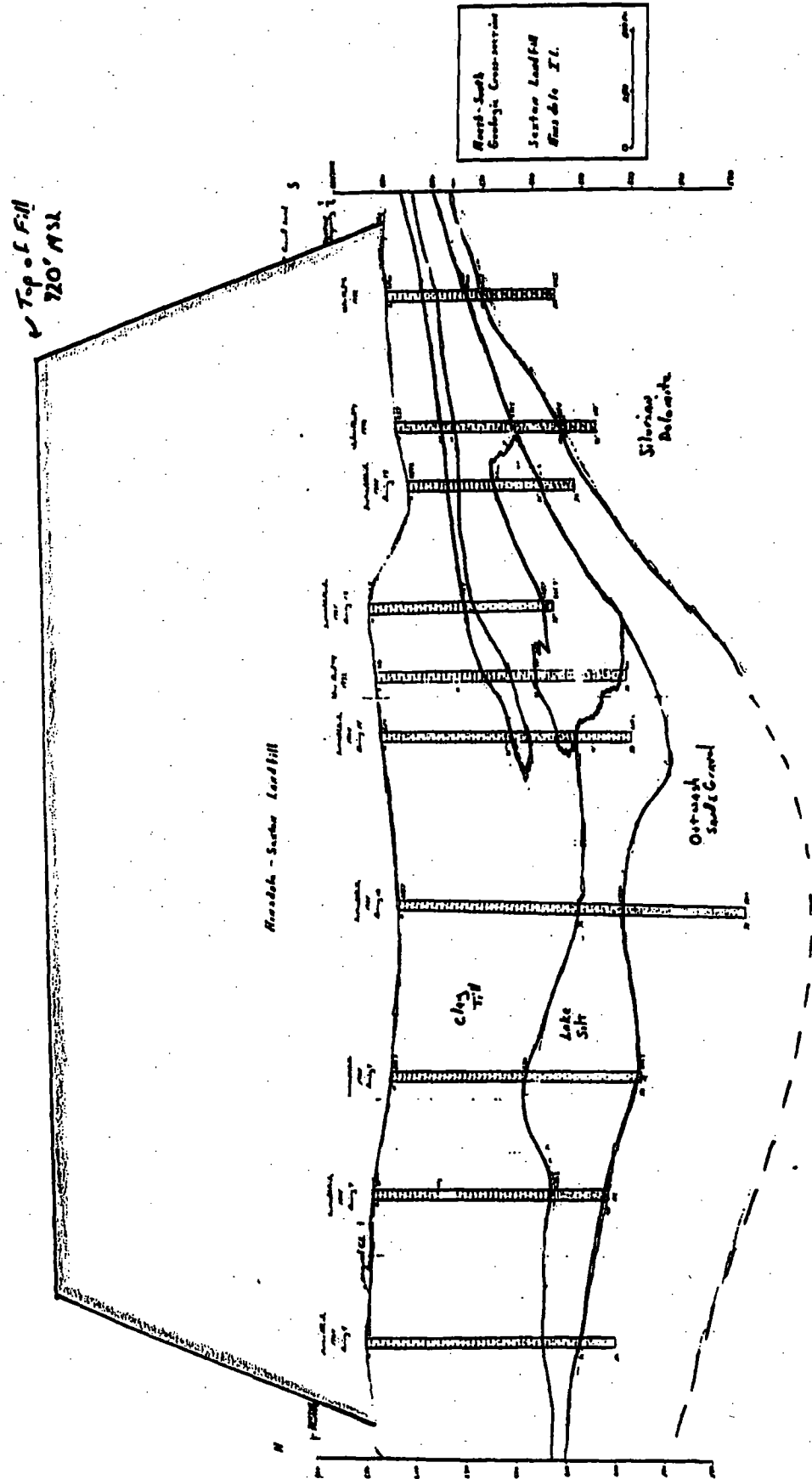
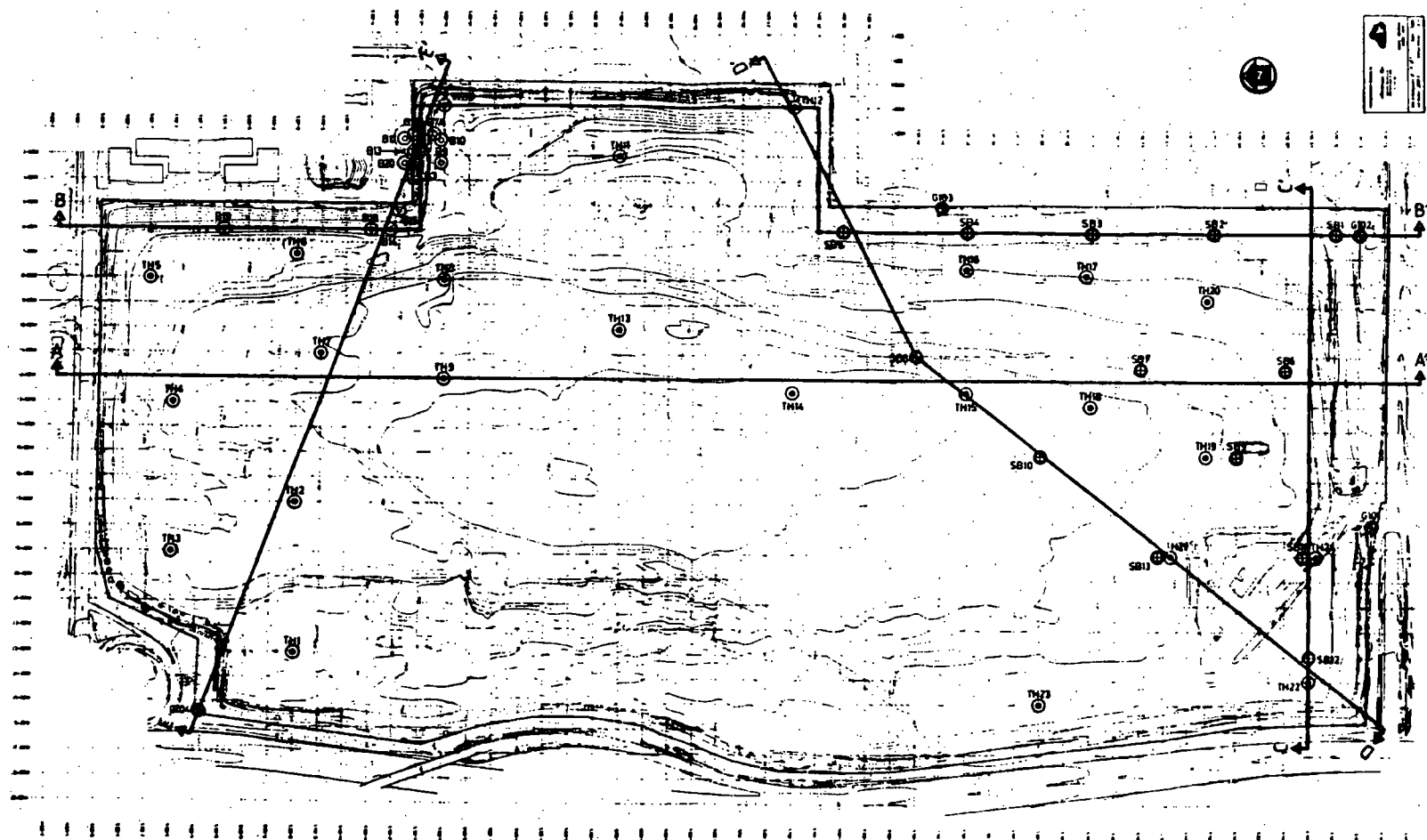


EXHIBIT 10

MAP OF SUBSURFACE INVESTIGATION

PREPARED BY ELDREDGE ENGINEERING ASSOCIATES, INC.



(O) TEST HOLES (TH)-1964 BY TESTING SERVICE CORPORATION
 (B) SOIL BORINGS (SB)-1972 BY W.H. FLOOD & CO INC.

KEY

A ——— A'
 B ——— B'
 C ——— C'
 D ——— D'

(W) WELLS (W)-1974 BY W.H. FLOOD & CO INC
 (B) BORINGS (B)-1981 BY A&H ENGINEERING CORPORATION

EXHIBIT G-1

SUBSURFACE INVESTIGATION

1200
 8/4/87

A
 31ST STREET LANDFILL

171-531

EXHIBIT 11

DEPARTMENT OF HEALTH AND HUMAN SERVICES MEMORANDUM

FROM TOXICOLOGIST, OFFICE OF HEALTH ASSESSMENT,

REGARDING SEXTON LANDFILL, DATED JANUARY 14, 1987

Memorandum

JAN 14 1987

From Toxicologist
Office of Health Assessment

Subject Health Consultation
Sexton Landfill (SI-87-057)
Hinsdale, Illinois

To
The Record

RECEIVED

FEB 05 1987

Program
Support SectionEXECUTIVE SUMMARY

The Environmental Protection Agency (EPA), Region V Office, has requested the Agency for Toxic Substances and Disease Registry (ATSDR) to review the results of groundwater samples from eight residential wells analyzed for a variety of inorganic elements and organic compounds. Concentrations of these substances were compared to National Interim Primary Drinking Water Regulations (NIPDWR) and National Secondary Drinking Water Regulations (NSDWR), and other applicable criteria. Analyses of the data suggest no long-term health concerns for the residents from daily consumption of these water supplies, except for those persons who may require a low sodium diet.

BACKGROUND

Sexton landfill has been in operation since the 1950's and there is no record of hazardous wastes being disposed into the landfill. The primary direction of groundwater flow is said by EPA to be east or southeast from the site. Eight residential wells, located east of the landfill, were recently sampled (October 1986) for contaminants and these data have been sent to the Agency for Toxic Substances and Disease Registry (ATSDR) for review and comment.

DOCUMENTS REVIEWED

1. Letter from Doug Yeskis to Louise Fabinski dated 11/24/86, re: Sexton landfill, residential well samples.
2. Data package for Sexton landfill, including analytical results and QA/QC validation.

DISCUSSION

MCLs are maximum contaminant levels (MCL) derived from scientific studies intended to prevent the development of chronic health effects from daily ingestion of contaminated water. Barium (MCL, 1000 ug/l) was found in all eight wells sampled at a maximum concentration of 119 ug/l (well S08). Cadmium (MCL, 10 ug/l) was found in wells S01 (1.3 ug/l), S02 (0.1 ug/l), S05 (0.11 ug/l), and S06 (0.11 ug/l). Lead (MCL, 50 ug/l) was found in well S01 at a concentration of 4.7 ug/l.

NSDWR are not based upon potential health effects but rather aesthetic concerns such as offensive tastes and odors. The levels of iron reported in all wells except S05 exceed the NSDWR standard of 300 ug/l. The levels of manganese in all wells except S07 and S08 exceed the NSDWR standard of 50 ug/l. None of the wells were found to exceed the standard set for copper at 1000 ug/l or zinc at 5000 ug/l.

EPA has established monitoring requirements for sodium in municipal water supplies. In view of the high sodium levels found (range, 25,000 - 100,000 ug/l), ATSDR would recommend that all users of these wells be notified of the situation since 20,000 ug/l is that value that physicians should take into account for modifying the diet of persons on a sodium-restricted diet.

Currently, there are no regulatory water standards for boron, nickel, and strontium. A report of the National Academy of Sciences Committee on Water Quality Criteria in 1963 recommended a permissible limit of 1000 ug/l for boron in drinking water. The EPA-Office of Drinking Water has suggested 350 ug/l and 51,000 ug/l lifetime drinking water equivalent levels (DWEL) for nickel and strontium respectively. These suggested permissible levels were not exceeded in any well. In addition, reported levels of lithium, calcium, magnesium, potassium, and sulfur, are not of health concern to any resident.

The common finding of bis(2-ethylhexyl) phthalate and other phthalate esters at levels ranging to 46 ug/l in all wells is not a health concern and may reflect laboratory contamination. Phenol at concentrations around 3 ug/l in all wells except S01 is an unlikely laboratory contaminant but is not of health significance at these levels. In addition, phenol was identified in the laboratory blank (R08) at a concentration of 3.8 ug/l.

CONCLUSION

Inorganic metals and metallic compounds are frequently reported waste site contaminants as a direct consequence of the increasing technologic use of metals. At present, no long-term health concerns were identified for the residents who draw their drinking water from the eight wells, except for those persons who may require a sodium-restricted diet.

The findings of low levels of cadmium and lead in several wells should be confirmed, as the reported levels were close to the limits of laboratory detection. Establishing a relationship between these metals and site activities would require sampling of downgradient monitoring wells.

Reviewers:

William Cibulas, Ph.D.

Mark McClanahan, Ph.D.

Stephen Von Allen

Concurrence:


Mark M. Bashor, Ph.D.

Director, Office of Health Assessment

EXHIBIT 12

IEPA LETTER TO MR. GEORGE LAMPERC

DATED MARCH 30, 1987



Illinois Environmental Protection Agency

1701 First Avenue, Maywood, IL 60153

312/345-9780

Refer to: 0314520001-Cook County-Hinsdale Sexton
Private Well Testing

March 30, 1987

George Lamperc
12 Hickory Lane
Oak Brook, Illinois 60521

Dear Mr. Lamperc:

In accordance with P.A. 83-1356 (Private Well Testing), a sample of your well water was collected on December 4, 1986. This sample was tested for inorganics, which have established drinking water standards, and include heavy metals and nitrates, and for organics, which include pesticides and PCB's, volatile chlorinated and aromatic compounds, hydrocarbons and herbicides.

The analytical results from this testing are enclosed. The results show that no maximum allowable concentrations were exceeded nor were any organic compounds detected.

Should you have any questions, please contact the undersigned.

Sincerely,

Cliff Gould, Northern Region Manager
Field Operations Section
Division of Land Pollution Control

CG:JB:dfa:0572K

Enclosure

cc: Division File
Northern Region
Illinois Dept. of Public Health-Paul Levin
Cook County Health Dept.-Bob Wollschlager
John Sexton Sand & Gravel Co.
USEPA-Doug Yeskis

EXHIBIT 13

SEXTON LETTER TO MR. MONTE NIENKIRK, IEPA

DATED FEBRUARY 10, 1988



**John Sexton Sand &
Gravel Corp.**

1815 South Wolf Road
Hillside, Illinois 60162
312-449-1250

CERTIFIED MAIL P 257 841 921

February 10, 1988

**Mr. Monte Nienkirk
Division of Land Pollution Control
Illinois Environmental Protection Agency
2200 Churchill Rd.
Springfield, IL 62706**

Dear Mr. Nienkirk:

In response to Illinois EPA's request, Sexton has taken the following actions:

- 1. Split samples of well water were taken at the Lucas residence with IEPA and USEPA on Saturday, February 6, 1988. Ms. Debbie Lucas was at home during the sampling.**
- 2. Split samples were also taken with IEPA at the Lampeer, T'lapa, and Holub homes.**
- 3. Since Sexton was refused access, a sample was taken by IEPA only at the O'Connell and Stoll residences.**
- 4. Samples were not taken at the other residences on Hickory Lane as no one was home to provide access and outside faucets were either inoperative or could not be located.**
- 5. A split sample was taken with IEPA at the Zygmunt residence on the west side of the Tollway.**
- 6. An air-stripper-carbon filtration unit has been ordered from North American Aqua for the Lucas home and can be delivered and installed by this weekend, February 13-14. Mr. Walter Lucas, the owner of the residence, has been out of town during the sampling and has stated to Sexton today that he would like to consider the situation before giving permission to install the unit. In the interim, the family will continue to use the bottled water for drinking as they have done for some time.**



M. Nienkirk
Page 2

7. Those homes which were sampled and use well water for drinking, Lampeer, T'lapa, Stoll and Holub, were told on Saturday that Sexton will provide bottled water if positive results are obtained for any sample.
8. Sexton samples were split and sent to two labs, Compu-Chem and Aqua Lab for processing on a RUSH basis.

Sexton has taken these actions out of concern for the health of the affected individuals. We are of the opinion that there is no evidence at this point that the Sexton operated landfill on 31st Street is the source of the constituents detected. However, we will do all that we can to alleviate health concerns while continuing our investigations and sampling to determine the origin of any groundwater problems affecting the Hickory Lane residents.

Sexton is, of course, ready to meet with IEPA at any time and will continue to keep you informed by phone of any new development of which we become aware.

Very truly yours,


Mary E. Drake
Staff Counsel

MED:ct

cc: Arthur A. Daniels, President
Alfred E. Gallo, General Counsel
Donald Massero, Catholic Cemeteries
Archdiocese of Chicago
James Russell, Winston & Strawn ✓
Percy Angelo, Mayer, Brown & Platt